

EXHIBIT 63

Lieutenant Colonel James Startzell

May 16, 2022

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DISTRICT

Civil No. 1:19-cv-00150-DMT-ARS,

VIDEOTAPE DEPOSITION OF:
LIEUTENANT COLONEL JAMES STARTZELL
May 16, 2022
(Via RemoteDepo)

STATE OF NORTH DAKOTA,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

PURSUANT TO NOTICE, the videotape deposition of LIEUTENANT COLONEL JAMES STARTZELL was taken on behalf of the Plaintiff in Fort Hood, Texas, via remote means, on May 16, 2022, at 8:59 a.m., Mountain Time, before Tiffany D. Goulding, Registered Professional Reporter and Notary Public within Colorado, appearing remotely from Arapahoe County, Colorado.

Lieutenant Colonel James Startzell

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<p>1 REMOTE APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 PAUL M. SEBY, ESQ.</p> <p>4 Greenberg Traurig, LLP</p> <p>5 1144 15th Street, Suite 3300</p> <p>6 Denver, Colorado 80202</p> <p>7 seby@gtlaw.com</p> <p>8 For the Defendant:</p> <p>9 JANE BOBET, ESQ.</p> <p>10 Special Attorney to the United States</p> <p>11 Attorney General</p> <p>12 United States Attorney's Office</p> <p>13 District of Colorado</p> <p>14 1801 California Street, Suite 1600</p> <p>15 Denver, Colorado 80202</p> <p>16 jane.bobet@usdoj.gov</p> <p>17 Also Present:</p> <p>18 John Jensen, Videographer</p> <p>19 Erica Zilioli</p> <p>20 Rachel Hymel</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Exhibit 392 E-mail to Startzell from Gaskill, 43</p> <p>2 11/18/16, Subject: Can You Call Me -</p> <p>3 DAPL Talking Point</p> <p>4 Exhibit 405 E-mail to Voeller from Startzell, 97</p> <p>5 3/8/17, Subject: Re: DAPL AAR</p> <p>6 Comments - Short Suspense</p> <p>7 DEPOSITION EXHIBITS: (Previously marked)</p> <p>8 Exhibit 138 E-mail to Arlo, et al. from 37</p> <p>9 Spellmon, 9/22/16, Subject: Re:</p> <p>10 DAPL Daily Update 22SEP16</p> <p>11 Exhibit 318 E-mail to Fink, Henderson, and 79</p> <p>12 Thomas from Startzell, 9/25/16,</p> <p>13 Subject: Re: LE Update on Protest</p> <p>14 Camps</p> <p>15 Exhibit 344 E-mail to Kirchmeier from Hushka, 75</p> <p>16 9/9/16, Subject: FW: Press Release</p> <p>17 Exhibit 345 E-mail to Spellmon, et al. from 70</p> <p>18 Crook, 9/12/16, Subject: Re: 1415</p> <p>19 Telecon</p> <p>20 Exhibit 347 E-mail to Semonite and Jackson from 88</p> <p>21 Spellmon, 10/13/16, Subject: Re:</p> <p>22 LTG Semonite Concern: DAPL Update</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 I N D E X</p> <p>2 EXAMINATION OF COLONEL JAMES STARTZELL: PAGE</p> <p>3 May 16, 2022</p> <p>4 By Mr. Seby 7</p> <p>5 By Ms. Bobet 113</p> <p>6</p> <p>7 DEPOSITION EXHIBITS: INITIAL</p> <p>8 (Exhibits provided electronically to the reporter.) REFERENCE</p> <p>9 Exhibit 371 E-mail to Startzell from Henderson, 15</p> <p>10 9/7/16, Subject: FWD: Request for</p> <p>11 Information on DAPL, Suspense</p> <p>12 Exhibit 372 E-mail to Kramer, et al. from 20</p> <p>13 Janis, 9/7/16, Subject: Re:</p> <p>14 Request for Information on DAPL,</p> <p>15 Suspense</p> <p>16 Exhibit 375 E-mail to Williamson and O'Hara 61</p> <p>17 from Startzell, 9/12/16, Subject:</p> <p>18 Re: Calls (unclassified)</p> <p>19 Exhibit 376 E-mail to Roby from Startzell, 47</p> <p>20 9/14/16, Subject: Re: Security</p> <p>21 Office Roll (Unclassified/FOUO)</p> <p>22 Exhibit 377 E-mail to Fink, Thomas, Chipman, 32</p> <p>23 Startzell, et al. from Henderson,</p> <p>24 9/22/16, Subject: Re: Camp Photos</p> <p>25 9/22/16 (Unclassified)</p> <p>26 Exhibit 379 E-mail to Eckert Uptmor, et al. from 25</p> <p>27 Henderson, 10/3/16, Subject: Re:</p> <p>28 Senator Heitkamp Information</p> <p>29 Request</p> <p>30 Exhibit 381 E-mail to Startzell from 86</p> <p>31 Williamson, 10/11/16, Subject: DAPL</p> <p>32 (Unclassified)</p> <p>33</p> <p>34</p> <p>35</p>	<p>1 WHEREUPON, the following proceedings</p> <p>2 were taken pursuant to the Federal Rules of Civil</p> <p>3 Procedure.</p> <p>4 * * * * *</p> <p>5 THE VIDEOGRAPHER: We are now on the</p> <p>6 record. Participants should be aware that this</p> <p>7 proceeding is being recorded, and as such all</p> <p>8 conversations held will be recorded unless there is a</p> <p>9 request and agreement to go off the record. Private</p> <p>10 conversations and/or attorney-client interactions</p> <p>11 should be held outside the presence of the remote</p> <p>12 interface.</p> <p>13 For the purpose of creating a</p> <p>14 witness-only video recording, the witness is being</p> <p>15 spotlighted or locked on all video screens while on</p> <p>16 speaker view. We ask that the witness not remove the</p> <p>17 spotlight setting during the deposition, as it may</p> <p>18 cause other participants to appear on the final video</p> <p>19 rather than just the witness. For anyone who doesn't</p> <p>20 want the witness video to take up the large part of</p> <p>21 your screen, you may click the gallery view button in</p> <p>22 the upper right corner of the remote depo interface.</p> <p>23 This is the remote video deposition of</p> <p>24 Lieutenant Colonel James Startzell being taken by</p> <p>25 counsel for the plaintiff. Today is May 16, 2022, and</p>

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<p style="text-align: right;">Page 6</p> <p>1 the time is 3 p.m. UTC, 10 a.m. Central. We are here</p> <p>2 in the matter of State of North Dakota versus the</p> <p>3 United States of America.</p> <p>4 My name is John Jensen, remote video</p> <p>5 technician on behalf of U.S. Legal Support. I am not</p> <p>6 related to any party in this action, nor am I</p> <p>7 financially interested in the outcome. At this time</p> <p>8 will the reporter, Tiffany Goulding, on behalf of U.S.</p> <p>9 Legal Support please swear -- or please read the</p> <p>10 statement for remote proceedings into the record.</p> <p>11 THE REPORTER: The attorneys</p> <p>12 participating in this deposition acknowledge that I am</p> <p>13 not physically present in the deposition room and that</p> <p>14 I will be reporting this deposition remotely. They</p> <p>15 further acknowledge that, in lieu of an oath</p> <p>16 administered in person, the witness will verbally</p> <p>17 declare his testimony in this matter is under penalty</p> <p>18 of perjury. The parties and their counsel consent to</p> <p>19 this arrange and waive any objections to this manner</p> <p>20 of reporter.</p> <p>21 Please indicate your agreement by stating</p> <p>22 your name and your agreement on the record. Mr. Seby</p> <p>23 first.</p> <p>24 MR. SEBY: Paul Seby. Yes, I agree.</p> <p>25 THE DEPONENT: James Startzell. I agree.</p>	<p style="text-align: right;">Page 8</p> <p>1 for the record.</p> <p>2 A. James Thane Paulding Startzell.</p> <p>3 Q. Thank you. Before we begin, like last</p> <p>4 time, let's just go over a few ground rules, if we</p> <p>5 may, for the deposition, most of which are intended</p> <p>6 just to help the court reporter take down everything</p> <p>7 we say, which is being written down and videotaped.</p> <p>8 Because of that, just to please ask you to verbalize</p> <p>9 your responses with a yes or a no or other answer as</p> <p>10 opposed to just nodding your head up and down or side</p> <p>11 to side. Also, no shorthand "uh-huh" or "huh-uh," if</p> <p>12 that's acceptable to you.</p> <p>13 A. I understand.</p> <p>14 Q. Likewise, it's difficult for the court</p> <p>15 reporter to take down what you are saying -- what we</p> <p>16 are saying if we happen to be inadvertently talking</p> <p>17 over each other. So I'll do my best not to interrupt</p> <p>18 you if you would do the same.</p> <p>19 And if you need a break, just please let</p> <p>20 me know. And if there's a question pending, please</p> <p>21 just answer it first. Then we can take a break. And</p> <p>22 let's plan on maybe a break every hour or so. This is</p> <p>23 a four-hour deposition today. So we will be moving</p> <p>24 quickly, and breaks to a minimum, if we could.</p> <p>25 If you don't understand a question I've</p>
<p style="text-align: right;">Page 7</p> <p>1 MS. BOBET: Jane Bobet. I agree.</p> <p>2 THE REPORTER: Lieutenant Startzell, I</p> <p>3 will also ask you to agree and declare that the</p> <p>4 testimony you are about to give will be under the</p> <p>5 penalty of perjury.</p> <p>6 THE DEPONENT: Yes, I understand.</p> <p>7 LIEUTENANT COLONEL JAMES STARTZELL,</p> <p>8 having verbally declared that his testimony in this</p> <p>9 matter is under penalty of perjury, testified as</p> <p>10 follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. SEBY:</p> <p>13 Q. All right. Good morning, Colonel</p> <p>14 Startzell.</p> <p>15 A. Good morning.</p> <p>16 Q. Good to see you again. This is your</p> <p>17 second deposition. And as the first, my name is Paul</p> <p>18 Seby. I'm both an attorney with the law firm of</p> <p>19 Greenberg Traurig and a Special Assistant Attorney</p> <p>20 General for the State of North Dakota. And today I'll</p> <p>21 refer to North Dakota as "the state" or "North</p> <p>22 Dakota." Do you understand that you have been sworn</p> <p>23 in this morning?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Please state your full name again</p>	<p style="text-align: right;">Page 9</p> <p>1 asked, just let me know. I'll repeat it or rephrase</p> <p>2 it and do my best to clarify what I'm trying to ask</p> <p>3 you. And if you understand -- if you don't understand</p> <p>4 a question, I'm going to ask you just to clarify it,</p> <p>5 if you would. And if you answer a question I've</p> <p>6 asked, I'm going to assume that you have understood</p> <p>7 that question that I'm asking, if that's understood.</p> <p>8 A. I understand.</p> <p>9 MS. BOBET: I'll just note -- I'm sorry.</p> <p>10 I don't mean to interrupt. I think you said this is</p> <p>11 four hours. I believe it's three, just so we're all</p> <p>12 on the same page.</p> <p>13 Q. (BY MR. SEBY) And is anyone in the room</p> <p>14 with you, Colonel?</p> <p>15 A. No.</p> <p>16 Q. And if you'd just please turn off</p> <p>17 electronic devices so you're not distracted, that</p> <p>18 would be great. Thank you. And do you have any</p> <p>19 documents in front of you?</p> <p>20 A. No. Just a little notepad.</p> <p>21 Q. Sure. Okay. Just the last couple of</p> <p>22 things, do you understand that you're obligated by</p> <p>23 oath to tell the truth today?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Colonel Startzell, what did</p>

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<p style="text-align: right;">Page 10</p> <p>1 you do to prepare for your deposition today?</p> <p>2 A. So Jane Bobet and I met on Thursday of</p> <p>3 last week for about an hour to discuss the upcoming</p> <p>4 deposition.</p> <p>5 Q. Did you meet in person or remotely?</p> <p>6 A. Remotely.</p> <p>7 Q. Okay. Did you meet with anyone else?</p> <p>8 A. Erica Zilioli was on the line as well.</p> <p>9 Q. Okay. Any other times besides that one</p> <p>10 preparation session?</p> <p>11 A. No.</p> <p>12 Q. Okay. Did you talk to anyone else other</p> <p>13 than your counsel after your first deposition?</p> <p>14 A. No.</p> <p>15 Q. Are you aware, Colonel, that after your</p> <p>16 first deposition that North Dakota has taken the sworn</p> <p>17 deposition of the following core individuals: Eileen</p> <p>18 Williamson, Eric Stasch, Colonel John Henderson, and</p> <p>19 General Scott Spellmon?</p> <p>20 A. Yes. Jane Bobet told me that last week.</p> <p>21 Q. Okay. And have you had any communication</p> <p>22 with any of those individuals since your first</p> <p>23 deposition?</p> <p>24 A. No.</p> <p>25 Q. I'm sorry?</p>	<p style="text-align: right;">Page 12</p> <p>1 like your first deposition in this case, this</p> <p>2 deposition today pertains to North Dakota's case</p> <p>3 against the United States under the Federal Tort</p> <p>4 Claims Act involving \$38 million in damages that North</p> <p>5 Dakota seeks to recover as a result of the Corps' and</p> <p>6 other federal official's actions associated with the</p> <p>7 protests against the Dakota Access Pipeline. Do you</p> <p>8 understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Colonel, are you still stationed at Fort</p> <p>11 Hood, Texas?</p> <p>12 A. Yes.</p> <p>13 Q. Has your address changed since your first</p> <p>14 deposition?</p> <p>15 A. No.</p> <p>16 Q. Has your position with the army changed</p> <p>17 since your first deposition?</p> <p>18 A. Yes.</p> <p>19 Q. In what regard, sir?</p> <p>20 A. So when we last met I was a battalion</p> <p>21 commander and I recently gave up my command.</p> <p>22 Q. And what does that mean in terms of a</p> <p>23 transition? Did you transition to some other</p> <p>24 responsibility?</p> <p>25 A. I gave up the command to an incoming</p>
<p style="text-align: right;">Page 11</p> <p>1 A. No.</p> <p>2 Q. Did you review any documents prior to</p> <p>3 today's deposition?</p> <p>4 A. I reviewed my deposition from the last</p> <p>5 time.</p> <p>6 Q. Okay. Did you review the transcript of</p> <p>7 your deposition by yourself or with your attorneys?</p> <p>8 A. I reviewed it by myself.</p> <p>9 Q. Okay. After your first deposition, did</p> <p>10 you do any research about the issues in this case?</p> <p>11 A. I did look at the latest news on the</p> <p>12 status of the case, but I think that was it.</p> <p>13 Q. And what news are you referring to?</p> <p>14 A. So the Corps of Engineers sends out a</p> <p>15 daily summary of news, nationwide news. And so I</p> <p>16 looked at the next few daily updates that came out to</p> <p>17 see if there were any updates about the status of the</p> <p>18 DAPL case.</p> <p>19 Q. Do you recall which daily reports you</p> <p>20 reviewed?</p> <p>21 A. No.</p> <p>22 Q. Were they recent?</p> <p>23 A. No. They were -- this was back when we</p> <p>24 first did the deposition.</p> <p>25 Q. And so as the court reporter indicated,</p>	<p style="text-align: right;">Page 13</p> <p>1 officer and I'm preparing to move. So that's why I</p> <p>2 gave it up.</p> <p>3 Q. Do you know where you'll be moving?</p> <p>4 A. Yes.</p> <p>5 Q. And where is that?</p> <p>6 A. To Stuttgart, Germany.</p> <p>7 Q. Will you be taking a new post?</p> <p>8 A. Yes.</p> <p>9 Q. And what is that?</p> <p>10 A. It's on the staff of the European</p> <p>11 command.</p> <p>12 Q. With the Corps or with the Department of</p> <p>13 the Army?</p> <p>14 A. It's a joint headquarters under -- yeah.</p> <p>15 Department of the Army, joint headquarters, though.</p> <p>16 Q. Including the Corps?</p> <p>17 A. The Corps of Engineers is not really</p> <p>18 involved in it.</p> <p>19 Q. And so what does joint command mean?</p> <p>20 Army and who else?</p> <p>21 A. What that means is it's a multiservice,</p> <p>22 so army, navy, and air force.</p> <p>23 Q. I see. Is there a time period that</p> <p>24 you'll be in that position?</p> <p>25 A. I will start in that position on July 6.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. And the time period for the position was</p> <p>2 the question.</p> <p>3 A. Yeah. It's unclear, but I think it</p> <p>4 should be around two years.</p> <p>5 Q. I see. Okay. So you'll be in Germany</p> <p>6 for that period of time?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Let's see. So turning to the DAPL</p> <p>9 protests and your role in the Corps, let's start with</p> <p>10 just asking you to speak to your understanding of the</p> <p>11 purpose of Corps-managed lands that are part of the</p> <p>12 Oahe project?</p> <p>13 A. Can you elaborate on that? What is --</p> <p>14 Q. I'm asking what your understanding of the</p> <p>15 Corps lands, lands that the Corps is responsible for,</p> <p>16 is in connection with what is referred to as "the Oahe</p> <p>17 project."</p> <p>18 A. Yeah. So the Corps-managed lands are</p> <p>19 lands where the Corps owns and manages the land on</p> <p>20 behalf of the government for the purposes of the</p> <p>21 project.</p> <p>22 Q. And what is the Oahe project's purpose?</p> <p>23 A. Yeah. In this case the Oahe project has</p> <p>24 eight authorized purposes by congress to include flood</p> <p>25 risk reduction, water supply, recreation, and several</p>	<p style="text-align: right;">Page 16</p> <p>1 "Larry."</p> <p>2 Q. (BY MR. SEBY) Colonel, do you know Mark</p> <p>3 Kramer?</p> <p>4 A. I do remember his name, but I don't</p> <p>5 remember a lot of details about him.</p> <p>6 MR. SEBY: Rachel, if we could go one or</p> <p>7 a couple of lines below Mark Kramer's name at the</p> <p>8 bottom.</p> <p>9 Q. (BY MR. SEBY) What is the Northwest</p> <p>10 Division/Pacific Ocean Division Regional Integration</p> <p>11 Team Headquarters, U.S. Army Corps?</p> <p>12 A. Yeah. So that is what we colloquially</p> <p>13 refer to as the RIT, R-I-T, regional integration team.</p> <p>14 And that is a liaison that sits in the headquarters of</p> <p>15 the Corps of Engineers.</p> <p>16 Q. A liaison to what?</p> <p>17 A. In his case, the liaison to the</p> <p>18 northwestern division.</p> <p>19 Q. Okay. And who does he report to?</p> <p>20 A. I believe he's responsible to the</p> <p>21 northwestern division leadership.</p> <p>22 Q. And who would that be at this period of</p> <p>23 time in 2016, September? Would that be Spellmon?</p> <p>24 A. That would be General Spellmon and</p> <p>25 Colonel Becerro.</p>
<p style="text-align: right;">Page 15</p> <p>1 others.</p> <p>2 Q. And your understanding of the others is</p> <p>3 available or not?</p> <p>4 A. I'd have to go back through the list, but</p> <p>5 those are the three that come to mind most readily.</p> <p>6 Q. Are there lands associated with the water</p> <p>7 aspect of the project?</p> <p>8 A. Yes. So the lake itself is part of the</p> <p>9 project and the land under the water, and it also</p> <p>10 includes flowage easements that account for the</p> <p>11 changing elevation of the lake and then other areas</p> <p>12 around the project that are necessary to maintain it.</p> <p>13 (Deposition Exhibit 371 was remotely</p> <p>14 introduced and provided electronically to the court</p> <p>15 reporter.)</p> <p>16 Q. Okay. So we're going to go through a</p> <p>17 number of exhibits this morning, Colonel. And if we</p> <p>18 could turn to -- the first one is Exhibit 371. And,</p> <p>19 Colonel, this is an e-mail chain. It's got two parts.</p> <p>20 The first one is an e-mail from Mark Kramer. Do you</p> <p>21 recognize that individual? If you go down to the</p> <p>22 bottom, please, the start of it. Pardon me. It's</p> <p>23 actually three e-mails on this chain. I misspoke.</p> <p>24 MR. SEBY: The very bottom one, if you</p> <p>25 could blow that up, Rachel, the bottom one. It starts</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Becerro. And does he have a counterpart</p> <p>2 to report to in headquarters as well?</p> <p>3 A. I believe he worked closely with any</p> <p>4 personnel in the headquarters USACE that he needed to</p> <p>5 interface with, yes, but I don't know who that was.</p> <p>6 Q. So looking at his e-mail here, if you</p> <p>7 could please take a moment and read that, that would</p> <p>8 be great.</p> <p>9 A. Okay.</p> <p>10 Q. So he says in -- this e-mail is to Larry</p> <p>11 Janis in the Corps. And he says in the e-mail, "We</p> <p>12 are looking to gather some information related to the</p> <p>13 DAPL protests that are current occurring at the Lake</p> <p>14 Sakakawea/Garrison project area."</p> <p>15 Who do you think he's referring to when</p> <p>16 he says "we are looking"?</p> <p>17 MS. BOBET: Objection; calls for</p> <p>18 speculation, foundation. You can answer.</p> <p>19 Q. (BY MR. SEBY) If you know.</p> <p>20 A. I would assume he's talking about the</p> <p>21 regional integration team at headquarters.</p> <p>22 Q. So this is a, you think -- in your</p> <p>23 opinion, is this an inquiry that's coming from the</p> <p>24 headquarters of the Corps?</p> <p>25 MS. BOBET: Objection; calls for</p>

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<p style="text-align: right;">Page 18</p> <p>1 speculation.</p> <p>2 Q. (BY MR. SEBY) Please answer the question.</p> <p>3 A. Yes, that would be my guess, that he is</p> <p>4 trying to gather information to provide to</p> <p>5 headquarters on behalf of the northwestern division.</p> <p>6 Q. Okay. And when he's talking about</p> <p>7 protests -- DAPL protests currently occurring at the</p> <p>8 Lake Sakakawea/Garrison project area, do you think</p> <p>9 he's intending to refer to the Oahe project?</p> <p>10 MS. BOBET: Objection; calls for</p> <p>11 speculation.</p> <p>12 A. I don't know. I'm not sure if he had</p> <p>13 gotten news about protests at Lake Sakakawea or if he</p> <p>14 was referring to Oahe.</p> <p>15 Q. (BY MR. SEBY) Would you take a look at --</p> <p>16 if you've read it already, great; if not, please do --</p> <p>17 the questions he poses below. There's three of them.</p> <p>18 A. Yes.</p> <p>19 Q. Have you read those?</p> <p>20 A. Yes.</p> <p>21 Q. So based upon his questions, do you think</p> <p>22 he's referring to anything other than the Oahe</p> <p>23 project?</p> <p>24 MS. BOBET: Objection; calls for</p> <p>25 speculation.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I don't remember what I did in relation</p> <p>2 to this particular e-mail.</p> <p>3 Q. Do you recall receiving the e-mail?</p> <p>4 A. No.</p> <p>5 (Deposition Exhibit 372 was remotely</p> <p>6 introduced and provided electronically to the court</p> <p>7 reporter.)</p> <p>8 Q. So if we could go to the next exhibit,</p> <p>9 which is 372. So this is a two-part chain e-mail.</p> <p>10 The first of the e-mail is the same beginning e-mail</p> <p>11 from Mark Kramer to Larry Janis. And an individual</p> <p>12 who was copied on that chain is Mark -- pardon me.</p> <p>13 Larry Janis responded to Mark Kramer and added a few</p> <p>14 people, including yourself. Do you see that there on</p> <p>15 the top e-mail?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you read that e-mail from</p> <p>18 Larry Janis to Mark Kramer?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So just a moment ago you told me</p> <p>21 you don't recall what you did in response, but I just</p> <p>22 want to point out this e-mail, which was the same day</p> <p>23 an hour or two later. And so Larry Janis is saying to</p> <p>24 Mark Kramer, "It would be best to provide one</p> <p>25 response." We received this a couple different spots.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. I'm not aware of any other protests at</p> <p>2 Lake Sakakawea.</p> <p>3 Q. (BY MR. SEBY) The question, sir, was are</p> <p>4 you thinking this could pertain to any other area</p> <p>5 besides the Oahe project?</p> <p>6 MS. BOBET: Same objection.</p> <p>7 Q. (BY MR. SEBY) Your answer?</p> <p>8 A. No.</p> <p>9 Q. Okay. So this e-mail then was forwarded</p> <p>10 on to you at the top there from Colonel Henderson on</p> <p>11 September 7. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And what does FSYA mean?</p> <p>14 A. That stands for for your situational</p> <p>15 awareness.</p> <p>16 Q. Okay. Do you know why Colonel Henderson</p> <p>17 was sending this to you?</p> <p>18 A. Probably just to make sure that I was</p> <p>19 aware of the conversation between some others.</p> <p>20 Q. Okay. What did you do to provide input</p> <p>21 on the responses from Mark Kramer below to Larry</p> <p>22 Janis?</p> <p>23 A. I don't remember.</p> <p>24 Q. You don't remember doing anything or you</p> <p>25 don't remember what you did?</p>	<p style="text-align: right;">Page 21</p> <p>1 Colonel Henderson got it. And so he's adding you to</p> <p>2 this with the message, "I have copied our Deputy,</p> <p>3 Major Startzell who is head -- who is leading the</p> <p>4 response effort, so he can include you on his</p> <p>5 response."</p> <p>6 Did you respond to this e-mail or the</p> <p>7 questions from Mr. Kramer?</p> <p>8 A. I don't remember.</p> <p>9 Q. You were leading the response effort,</p> <p>10 though; right?</p> <p>11 A. So I think what Larry Janis is referring</p> <p>12 to, and in our last deposition what I explained was, I</p> <p>13 would on a daily basis get the team together to</p> <p>14 synchronize what information had come out. And then I</p> <p>15 would provide summaries to the headquarters about the</p> <p>16 latest information. So I assume that is what he's</p> <p>17 talking about.</p> <p>18 Q. Okay. So with respect, though,</p> <p>19 separately to the questions that Mr. Kramer has asked</p> <p>20 of Larry Janis that Janis is responding to, you see</p> <p>21 those questions there below?</p> <p>22 A. Yes, I saw them.</p> <p>23 Q. Okay. What do you think the answers to</p> <p>24 these questions were, if you don't recall what you</p> <p>25 did?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. So are you asking me to recount what I</p> <p>2 think I wrote back, if I wrote something back? Are</p> <p>3 you asking me my current understanding?</p> <p>4 Q. Well, as of September 7, 2016, what do</p> <p>5 you recall your understanding of the response to those</p> <p>6 questions, whether you did or not?</p> <p>7 A. So I do not recall what I answered back</p> <p>8 with at that time.</p> <p>9 Q. Okay. Then what do you think the answers</p> <p>10 were, whether you responded or not? Number one, let's</p> <p>11 take one at a time. What was your thought in response</p> <p>12 to No. 1, if you don't know whether you responded or</p> <p>13 not?</p> <p>14 A. So I think I had become aware that there</p> <p>15 were protesters gathering on Corps-administered lands,</p> <p>16 yes. At that time I don't know if I understood</p> <p>17 whether or not they were on grazing lands or lands</p> <p>18 covered under a grazing lease.</p> <p>19 Q. So you knew they were on Corps land, you</p> <p>20 just didn't know where?</p> <p>21 A. Right.</p> <p>22 Q. Let's look at No. 2.</p> <p>23 A. No. 2, I do not recall if I was aware</p> <p>24 that they were intent on building structures. So I</p> <p>25 don't have a recollection of at that time what I knew</p>	<p style="text-align: right;">Page 24</p> <p>1 then sometimes through my security office, who was in</p> <p>2 contact at times with other security entities. And</p> <p>3 then we would also monitor the news to see what the</p> <p>4 news was telling us so that we could confirm or deny</p> <p>5 what was in the news.</p> <p>6 Q. When you say -- in one of the five</p> <p>7 sources of information you mentioned the Corps field</p> <p>8 office reports. Can you elaborate on what you mean by</p> <p>9 that?</p> <p>10 A. Our primary conduit for information was</p> <p>11 the Oahe project and the Oahe project manager, Eric</p> <p>12 Stasch. And so he was the one most closely on the</p> <p>13 ground there with the events as they were unfolding.</p> <p>14 Q. Okay. How about the Corps security</p> <p>15 office? Can you describe that?</p> <p>16 A. Yeah. So my Corps security manager</p> <p>17 Mr. Roger Roby was in contact with local law</p> <p>18 enforcement and the North Dakota EOC on about a weekly</p> <p>19 basis. About a weekly basis he was in contact with</p> <p>20 them.</p> <p>21 Q. Okay. And how was he in contact with</p> <p>22 them?</p> <p>23 A. There was a web tool where local law</p> <p>24 enforcement reports were published, and so he would</p> <p>25 see the updates to that information as it was</p>
<p style="text-align: right;">Page 23</p> <p>1 about that effort.</p> <p>2 Q. And No. 3?</p> <p>3 A. No. 3, I do not recall if -- I don't</p> <p>4 think we saw this as a safe haven for the protests,</p> <p>5 but I don't know at the time what I understood.</p> <p>6 Q. So, Colonel, would you describe your</p> <p>7 position with the Corps with respect to the protests</p> <p>8 against the Dakota Access Pipeline for the period of</p> <p>9 March 2016 to March 2017?</p> <p>10 A. Yes. So at that time I was the deputy</p> <p>11 commander and chief of staff. And so my daily</p> <p>12 activities related to the Dakota Access Pipeline</p> <p>13 protests would be coordinating efforts with our field</p> <p>14 offices, trying to gather the latest information that</p> <p>15 we had on the situation, providing that information to</p> <p>16 the commander for decision-making, and providing that</p> <p>17 information to our headquarters for awareness and</p> <p>18 decision-making.</p> <p>19 Q. Okay. When you say you gathered daily</p> <p>20 information to inform the Corps, what -- where did you</p> <p>21 gather information from?</p> <p>22 A. So I gathered it largely from our field</p> <p>23 office reports, occasionally from integration with the</p> <p>24 North Dakota Emergency Operations Center, sometimes</p> <p>25 from contact with the sheriff of Morton County, and</p>	<p style="text-align: right;">Page 25</p> <p>1 published. And I believe he also actually called the</p> <p>2 North Dakota EOC at times and called the local law</p> <p>3 enforcement, when appropriate.</p> <p>4 (Deposition Exhibit 379 was remotely</p> <p>5 introduced and provided electronically to the court</p> <p>6 reporter.)</p> <p>7 Q. Okay. If we could turn to Exhibit 379,</p> <p>8 please. Colonel, will you take a minute and read this</p> <p>9 e-mail chain. It's got several parts. I apologize.</p> <p>10 This is how your counsel provided it. It's got four</p> <p>11 different e-mails in this chain here.</p> <p>12 If you would go to the beginning, which</p> <p>13 is the way this is structured, it's the back one from</p> <p>14 Kayla Eckert Uptmor with the Corps to Colonel</p> <p>15 Henderson. And there's an e-mail or three that are</p> <p>16 not sent to you. You're added later. And I'll let</p> <p>17 you have a look to see that in a moment.</p> <p>18 A. Let me see if I can move this. The</p> <p>19 window is partially covering the e-mail. So I'm going</p> <p>20 to see if I can move it. Okay. There we go. Okay.</p> <p>21 Q. Great. Have you read the whole -- read</p> <p>22 the whole chain. Just let us know when you need to</p> <p>23 move up one.</p> <p>24 A. Okay. So I just read that first one.</p> <p>25 Q. Keep going.</p>

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<p style="text-align: right;">Page 26</p> <p>1 A. Keep going up, please. Okay. Keep</p> <p>2 going. Okay. Stop there, please. Thank you. Okay.</p> <p>3 All right. I'm reading the top e-mail now.</p> <p>4 Q. Great.</p> <p>5 A. Okay.</p> <p>6 Q. Are you done? You're done reading the</p> <p>7 whole chain?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. I just want to ask you about the</p> <p>10 Colonel Henderson e-mail to Kayla Eckert Uptmor with</p> <p>11 the Corps where he added you to this entire string.</p> <p>12 Do you see that?</p> <p>13 A. I'm trying to see where I was added.</p> <p>14 Q. It's the top e-mail, right there at the</p> <p>15 top. You're in the cc list, if you see --</p> <p>16 A. I see that.</p> <p>17 Q. Okay. So are you familiar with what</p> <p>18 Colonel Henderson is talking about in this e-mail?</p> <p>19 A. I can vaguely remember this situation,</p> <p>20 yes.</p> <p>21 Q. Okay. Can you elaborate on what you read</p> <p>22 here and talk about what Henderson is referring to as</p> <p>23 "the Chairman and I"? Is he referring to Chairman</p> <p>24 Archambault of the Standing Rock Sioux Tribe?</p> <p>25 MS. BOBET: Objection; compound, calls</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. (BY MR. SEBY) And what does he mean by</p> <p>2 "the SRST Council has decided to support this," if you</p> <p>3 know?</p> <p>4 MS. BOBET: Same objection.</p> <p>5 A. I don't know.</p> <p>6 Q. (BY MR. SEBY) Come down, if you would, to</p> <p>7 the third paragraph.</p> <p>8 A. Okay.</p> <p>9 Q. And the second sentence, Colonel</p> <p>10 Henderson says, "If his campers perceive that he is</p> <p>11 buckling to Corps or State pressure, then the</p> <p>12 Tribal-led idea will likely fail." What is he talking</p> <p>13 about?</p> <p>14 MS. BOBET: Objection; calls for</p> <p>15 speculation.</p> <p>16 A. My guess is he was referring to campers</p> <p>17 that were sponsored by or were tribal members for the</p> <p>18 Standing Rock Sioux Tribe.</p> <p>19 Q. (BY MR. SEBY) Just those people?</p> <p>20 A. That would be my guess.</p> <p>21 Q. What does it mean for him to say "his</p> <p>22 campers," if they're on Corps land?</p> <p>23 MS. BOBET: Objection; calls for</p> <p>24 speculation.</p> <p>25 A. I don't know.</p>
<p style="text-align: right;">Page 27</p> <p>1 for speculation. You can answer.</p> <p>2 A. Yes, I believe that's who he's referring</p> <p>3 to.</p> <p>4 Q. (BY MR. SEBY) And what does he mean by</p> <p>5 tribal led migration off of U.S. Army Corps of</p> <p>6 Engineers-managed land?</p> <p>7 MS. BOBET: Objection; calls for</p> <p>8 speculation.</p> <p>9 A. I believe what he's referring to is he</p> <p>10 was trying to get the tribe leadership to support</p> <p>11 moving any protesters off of USACE-managed land onto</p> <p>12 tribal-owned land.</p> <p>13 Q. (BY MR. SEBY) Just certain kinds of</p> <p>14 protesters or everybody?</p> <p>15 A. I don't remember if there were any</p> <p>16 particulars discussed, but I would guess the goal was</p> <p>17 to move everybody.</p> <p>18 Q. And when he says, "We have made great</p> <p>19 progress on this, the SRST Council has decided to</p> <p>20 support this," what "great progress" is he referring</p> <p>21 to, if you know?</p> <p>22 MS. BOBET: Objection; calls for</p> <p>23 speculation.</p> <p>24 A. I don't know in detail what he's -- what</p> <p>25 progress he's referring to.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. (BY MR. SEBY) Okay. And then next</p> <p>2 sentence, "This will cause us to actually go through</p> <p>3 with an eviction notice and a court-ordered removal</p> <p>4 which is something that we are trying to avoid," what</p> <p>5 is that all about, in your opinion?</p> <p>6 MS. BOBET: Objection; calls for</p> <p>7 speculation.</p> <p>8 A. So my guess would be at the time we were</p> <p>9 trying to balance the free speech of the protesters</p> <p>10 with the need to keep them from trespassing.</p> <p>11 Q. (BY MR. SEBY) Keep them from trespassing,</p> <p>12 or were they already doing that because they were on</p> <p>13 Corps land?</p> <p>14 A. Yes, technically they were.</p> <p>15 Q. They were what?</p> <p>16 A. Trespassing.</p> <p>17 Q. Why do you say that?</p> <p>18 A. Because they did not have a permit to be</p> <p>19 on the land and were using it for purposes other than</p> <p>20 the normal recreation purposes.</p> <p>21 Q. And what do you mean by that?</p> <p>22 A. Well, normally people would go to the</p> <p>23 lake to use the boat slips or to do some kind of</p> <p>24 temporary camp, you know, the duration, like a day or</p> <p>25 so, but it was clear that they didn't intend on using</p>

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<p style="text-align: right;">Page 30</p> <p>1 it for those normal purposes.</p> <p>2 Q. Why do you say that? Because you</p> <p>3 observed them doing things other than those normal</p> <p>4 purposes?</p> <p>5 A. Well, so our understanding was they were</p> <p>6 there to protest the Dakota Access Pipeline, so yes.</p> <p>7 Q. And at this point on October 3, protests</p> <p>8 had been going on Corps property for almost two months</p> <p>9 by now, hadn't it?</p> <p>10 A. I don't remember the start, but it had</p> <p>11 been several weeks at least, yes.</p> <p>12 Q. Those folks, many of them had been there</p> <p>13 for several weeks without a permit already at this</p> <p>14 point; right?</p> <p>15 A. Yes, I believe that's accurate.</p> <p>16 Q. Okay. If we could go on to talk about --</p> <p>17 when did you first learn that the DAPL protesters were</p> <p>18 physically present on Corps property?</p> <p>19 MS. BOBET: I'll just object here, lodge</p> <p>20 an objection to this line of questioning which we</p> <p>21 covered in Lieutenant Colonel's last deposition. So</p> <p>22 I'll object to it as asked and answered, as well as</p> <p>23 outside the limited scope of this reopened deposition,</p> <p>24 which was just to address newly produced materials</p> <p>25 after that full-day deposition we already had with</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. How did you learn, Colonel?</p> <p>2 A. I don't remember the way the report came</p> <p>3 to me, but it was reported either through the project</p> <p>4 office or through local law enforcement, something</p> <p>5 like that.</p> <p>6 Q. Okay. Do you recall who you told when</p> <p>7 you first learned that?</p> <p>8 A. I don't recall, no.</p> <p>9 Q. Do you know, Colonel, or do you recall</p> <p>10 when the DAPL protesters started camping overnight on</p> <p>11 Corps lands?</p> <p>12 A. No, I don't know. I don't distinguish</p> <p>13 between overnight and just camping in general.</p> <p>14 (Deposition Exhibit 377 was remotely</p> <p>15 introduced and provided electronically to the court</p> <p>16 reporter.)</p> <p>17 Q. If we could go to Exhibit 377, please.</p> <p>18 MS. BOBET: So I'll just note here this</p> <p>19 exhibit was produced before Lieutenant Colonel</p> <p>20 Startzell's prior full-day deposition. So, again, on</p> <p>21 the basis of the limited scope of this reopened</p> <p>22 deposition, we'll lodge an objection to this exhibit</p> <p>23 and related questions.</p> <p>24 MR. SEBY: Are you done?</p> <p>25 MS. BOBET: Just for the record, we</p>
<p style="text-align: right;">Page 31</p> <p>1 this witness.</p> <p>2 MR. SEBY: If we're going to have a</p> <p>3 debate, I'll go off the record so we don't waste my</p> <p>4 time. But I'm talking about topics that are related</p> <p>5 to the documents that were produced after his first</p> <p>6 deposition. And I'm not reploting old ground. It</p> <p>7 wastes my time to do that. So I have no incentive or</p> <p>8 interest in doing that, Ms. Bobet.</p> <p>9 MS. BOBET: I've lodged my objections.</p> <p>10 I'm not instructing the witness not to answer your</p> <p>11 question, but I'm entitled to make my record and I'm</p> <p>12 doing that.</p> <p>13 MR. SEBY: And that's fine. I'll just</p> <p>14 ask you on the record not to waste my time anymore.</p> <p>15 MS. BOBET: I don't agree that I've</p> <p>16 wasted your time at all, but let's proceed.</p> <p>17 Q. (BY MR. SEBY) Please answer the question,</p> <p>18 Colonel.</p> <p>19 A. So I think based on the last deposition,</p> <p>20 I think what I remember is sometime in August I</p> <p>21 learned that there were protesters encamped on Corps</p> <p>22 land.</p> <p>23 Q. Okay.</p> <p>24 A. Maybe as late as -- or as early as late</p> <p>25 July, but definitely by August.</p>	<p style="text-align: right;">Page 33</p> <p>1 received the potential exhibits to be used today this</p> <p>2 morning shortly before the deposition. So we haven't</p> <p>3 had an opportunity to go document by document, but I</p> <p>4 just want to lodge that objection. But with that, you</p> <p>5 can ask your questions.</p> <p>6 Q. (BY MR. SEBY) Colonel, if you'd please</p> <p>7 look at this e-mail, which is a five-part e-mail.</p> <p>8 It's a page and a half. So it will go quickly.</p> <p>9 A. Okay. I'm looking at the -- okay. Is</p> <p>10 that the bottom that's the first in the chain?</p> <p>11 Q. The first one is from Tonya Jahner with</p> <p>12 Cass County, North Dakota, to a number of federal and</p> <p>13 state representatives. There's FBI people, DOJ, and</p> <p>14 Kyle Kirchmeier. It's a camp photo and the text of</p> <p>15 the e-mail simply says "Items of note: Road grater</p> <p>16 building roads on core land and tactical looking van."</p> <p>17 And this is September 22, 2016. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And then that e-mail is forwarded</p> <p>20 by one of the recipients, Lynn Woodall with Morton</p> <p>21 County, to a Corps individual, Todd Lindquist. Do you</p> <p>22 know Mr. Lindquist?</p> <p>23 A. Yes. I believe he was the manager of the</p> <p>24 Garrison project --</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 34</p> <p>1 A. -- in North Dakota.</p> <p>2 Q. All right. And Mr. Lindquist forwarded</p> <p>3 it on to Keith Fink. Do you know Mr. Fink?</p> <p>4 A. Yes.</p> <p>5 Q. And he is?</p> <p>6 A. Keith Fink was the chief of the</p> <p>7 operations division in our district.</p> <p>8 Q. Okay. In the Omaha district?</p> <p>9 A. Correct.</p> <p>10 Q. Then Mr. Lindquist says to Mr. Fink,</p> <p>11 Sheriff Danzeisen called to ask me if I was aware the</p> <p>12 folks at the demonstration were building a road at</p> <p>13 their campsite? I told him that the permit I saw, and</p> <p>14 the letter forwarding the permit, made it clear that</p> <p>15 the tribe was not to build any structures on Corps</p> <p>16 owned property without prior approval of the</p> <p>17 Commander. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know as of September 22 what</p> <p>20 permit he's referring to?</p> <p>21 MS. BOBET: Objection; calls for</p> <p>22 speculation.</p> <p>23 A. No, I don't. I don't recall a permit for</p> <p>24 that.</p> <p>25 Q. (BY MR. SEBY) Okay. It's a</p>	<p style="text-align: right;">Page 36</p> <p>1 Colonel Henderson on how to handle this, being the</p> <p>2 photo proof of road construction on Corps property?</p> <p>3 A. I don't recall.</p> <p>4 Q. Okay. You were the deputy district</p> <p>5 commander; right?</p> <p>6 A. Yes.</p> <p>7 Q. Was this a low-priority topic on your</p> <p>8 radar at the time or was it a big deal?</p> <p>9 A. I would say this was of concern, yes.</p> <p>10 Q. Do you recall doing anything in response</p> <p>11 to this e-mail or just reading it and moving on?</p> <p>12 A. Well, so as I said, I was in charge of</p> <p>13 getting the team together to gather information on a</p> <p>14 daily basis or at least a biweekly basis, but I don't</p> <p>15 recall specific to this e-mail what actions I took.</p> <p>16 Q. How about specific to the fact that you</p> <p>17 received a report that people were building roads</p> <p>18 using a road grader on Corps of Engineer's property</p> <p>19 and, as you've said, nobody had a permit to do that?</p> <p>20 A. Yeah. I don't recall exactly what</p> <p>21 actions I took based on that information.</p> <p>22 Q. Do you recall doing anything at all?</p> <p>23 MS. BOBET: Objection; asked and</p> <p>24 answered.</p> <p>25 A. Yeah. I don't recall what actions I took</p>
<p style="text-align: right;">Page 35</p> <p>1 Corps-to-Corps communication, so I'm assuming he's</p> <p>2 referencing a Corps permit of some kind. Do you</p> <p>3 disagree with that?</p> <p>4 MS. BOBET: Objection; calls for</p> <p>5 speculation.</p> <p>6 A. Yeah. I would guess yes, but I don't</p> <p>7 recall it, a permit.</p> <p>8 Q. (BY MR. SEBY) So Mr. Lindquist -- I'm</p> <p>9 sorry. Mr. Fink then forwarded that e-mail -- this</p> <p>10 whole e-mail string on to you, to a couple people,</p> <p>11 Colonel Henderson and others, including yourself. Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And Mr. Fink said Todd Lindquist of the</p> <p>15 Corps "has forwarded the attached photos from the DAPL</p> <p>16 protest camp showing road construction underway." Do</p> <p>17 you have any reason to believe that that's not road</p> <p>18 construction on Corps property?</p> <p>19 A. No.</p> <p>20 Q. And then that e-mail, which was of course</p> <p>21 sent to Colonel Henderson and you, was responded to by</p> <p>22 Colonel Henderson, copied to you on that response.</p> <p>23 And he thanks Mr. Fink and he says, "Any</p> <p>24 recommendations on how to handle this."</p> <p>25 Did you provide any suggestions to</p>	<p style="text-align: right;">Page 37</p> <p>1 based on this information.</p> <p>2 Q. (BY MR. SEBY) Okay. All right. Well,</p> <p>3 let's move on to Exhibit 138, please. This is an</p> <p>4 e-mail from -- it's an e-mail chain and it starts</p> <p>5 with -- it's two e-mails. The first one is from you,</p> <p>6 Colonel, to a large number of Corps individuals, which</p> <p>7 include Colonel Henderson, your boss, and Colonel</p> <p>8 Henderson's boss, Brigadier General Spellmon. And</p> <p>9 you're giving a report entitled "DAPL Daily Update,"</p> <p>10 September 22, 2016. And the update for today follows.</p> <p>11 Is this an example of one of your daily updates to a</p> <p>12 large group of people --</p> <p>13 A. Yes.</p> <p>14 Q. -- in the Corps?</p> <p>15 All right. And if we could look at</p> <p>16 No. 4, please, of your report, item No. 4.</p> <p>17 A. Okay.</p> <p>18 Q. "Omaha District confirmed that there are</p> <p>19 no law enforcement contracts in place with Morton</p> <p>20 County (Only with Burleigh County, which is farther</p> <p>21 north and across the river)."</p> <p>22 Why were you providing that point of</p> <p>23 information to your Corps colleagues?</p> <p>24 A. So that they understood what law</p> <p>25 enforcement capabilities we had in place at that</p>

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<p style="text-align: right;">Page 38</p> <p>1 project site.</p> <p>2 Q. Well, that's not what your sentence is</p> <p>3 about. There's no law enforcement contracts in place</p> <p>4 with Morton County. What would have been a law</p> <p>5 enforcement contract?</p> <p>6 A. So some of the project sites would pay</p> <p>7 the local police to have them patrol more often along</p> <p>8 the recreation site areas, especially in times of high</p> <p>9 traffic like in the summer when there were a lot of</p> <p>10 personnel using the lake facilities.</p> <p>11 Q. And why would you tell this group about</p> <p>12 that, that you didn't have a contract for local law</p> <p>13 enforcement to conduct patrols of the Oahe project</p> <p>14 area?</p> <p>15 A. I think probably so that they understood</p> <p>16 that our ability to cite personnel was going to be</p> <p>17 limited to our park rangers.</p> <p>18 Q. What does local law enforcement have</p> <p>19 anything to do with that?</p> <p>20 A. So local law enforcement, the reason that</p> <p>21 they would be called in is to enforce any kind of</p> <p>22 criminal concerns or to assist with a situation that</p> <p>23 our park rangers could not handle.</p> <p>24 Q. What situations did your park rangers</p> <p>25 handle at the Oahe project during the DAPL protests?</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. BOBET: Objection stands.</p> <p>2 A. So I know at one point we closed the land</p> <p>3 north of the river to try to create a space south of</p> <p>4 the river to limit the footprint that the protesters</p> <p>5 were on.</p> <p>6 Q. (BY MR. SEBY) Colonel Startzell, this</p> <p>7 e-mail is dated September 22. So when you're talking</p> <p>8 about later on you closed the river, what date are you</p> <p>9 referring to now?</p> <p>10 A. I don't remember what date it was, but I</p> <p>11 just know it was some weeks later.</p> <p>12 Q. Does November 22 or 25 ring a bell,</p> <p>13 almost over two months later?</p> <p>14 A. It's possible that it was then.</p> <p>15 Q. So that's different than your couple of</p> <p>16 weeks later; right? Two months is much more?</p> <p>17 A. Well, I mean, as I said, I don't remember</p> <p>18 exactly what date it was, but it was some weeks later.</p> <p>19 Q. You're the deputy commander of the</p> <p>20 district; right?</p> <p>21 A. Yes, at that time I was.</p> <p>22 Q. Why do you think that the DAPL protesters</p> <p>23 chose to enter onto Corps land?</p> <p>24 MS. BOBET: Objection; calls for</p> <p>25 speculation, foundation.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. I don't remember specific incidents, but</p> <p>2 I know that they had engaged some of the protesters</p> <p>3 early on. And I don't remember what resulted in that,</p> <p>4 but I know that early on, we were concerned with how</p> <p>5 we were going to be able to control -- if the crowd</p> <p>6 was drawing, how we'd be able to manage that.</p> <p>7 Q. And so what did you do or conclude based</p> <p>8 upon those concerns?</p> <p>9 A. I don't understand the question.</p> <p>10 Q. You said you had concerns about growth of</p> <p>11 the protest camps. And so what did you do in response</p> <p>12 to those concerns is the question.</p> <p>13 A. So I think we were in dialogue with the</p> <p>14 tribes, as the earlier e-mails pointed out. And I</p> <p>15 believe that we were in contact with the State of</p> <p>16 North Dakota and with the Morton County Sheriff and</p> <p>17 then providing updates to our headquarters as well.</p> <p>18 Q. So you just talked to other people, but</p> <p>19 what did the Corps do? I'll ask the question a third</p> <p>20 time: What did the Corps do, based upon the concerns</p> <p>21 that you identified with the risk and the threat of</p> <p>22 growing protests on Corps prompt?</p> <p>23 MS. BOBET: Objection; asked and</p> <p>24 answered.</p> <p>25 MR. SEBY: No, it wasn't.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yeah. I don't really know why they chose</p> <p>2 that land.</p> <p>3 Q. (BY MR. SEBY) Do you know why they chose</p> <p>4 not to set up instead on private property?</p> <p>5 MS. BOBET: Same objections.</p> <p>6 A. So I believe there were encampments on</p> <p>7 private property as well as Corps land and tribal land</p> <p>8 at various times during the protests.</p> <p>9 Q. (BY MR. SEBY) Which ones?</p> <p>10 A. Which what?</p> <p>11 Q. Which camps are you referring to not on</p> <p>12 Corps land, and when?</p> <p>13 A. I don't remember the specifics about</p> <p>14 which camps. I just know that over time there were</p> <p>15 camps in various places and not all of them were on</p> <p>16 Corps land.</p> <p>17 Q. You can't identify any one in particular</p> <p>18 or when?</p> <p>19 A. No, not to my recollection right now.</p> <p>20 Q. Okay. Can you describe your role in</p> <p>21 working with the Standing Rock Sioux Tribe Chairman</p> <p>22 Archambault?</p> <p>23 MS. BOBET: Again, I'll just object. I</p> <p>24 think this is a line of questioning we covered in the</p> <p>25 prior deposition. So I'll just lodge a standing</p>

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<p style="text-align: right;">Page 42</p> <p>1 objection.</p> <p>2 A. Yeah. So my role in interfacing with</p> <p>3 Chairman Archambault was limited. Normally Colonel</p> <p>4 Henderson would be the one to talk to him directly. I</p> <p>5 think it did come to my attention during the last</p> <p>6 deposition when we talked about this that I had</p> <p>7 e-mailed him at one point in time to provide some</p> <p>8 documents regarding a special use permit.</p> <p>9 Q. (BY MR. SEBY) And did you believe that</p> <p>10 Chairman Archambault was publicly calling for people</p> <p>11 to come to North Dakota to protest against the Dakota</p> <p>12 Access Pipeline?</p> <p>13 MS. BOBET: Objection; asked and answered</p> <p>14 in the prior deposition.</p> <p>15 A. Yes. That was my understanding, is that</p> <p>16 he was supportive of people coming to protest.</p> <p>17 Q. (BY MR. SEBY) Okay. And when was he</p> <p>18 making those appeals for people to come to North</p> <p>19 Dakota to join the protest against the Dakota Access</p> <p>20 Pipeline?</p> <p>21 A. I don't remember when, but it must have</p> <p>22 been sometime in late summer, August or July.</p> <p>23 Q. Okay. And where was he calling for the</p> <p>24 protesters to gather?</p> <p>25 A. I don't remember specific locations that</p>	<p style="text-align: right;">Page 44</p> <p>1 introduced and provided electronically to the court</p> <p>2 reporter.)</p> <p>3 Q. Okay. If we can go to Exhibit 392,</p> <p>4 please. This is a single e-mail exhibit. If you</p> <p>5 could read that, please. Let me know when you're</p> <p>6 done, please.</p> <p>7 A. Okay. Can you scroll down? That will</p> <p>8 work. Okay.</p> <p>9 Q. So this is mid-November, November -- I</p> <p>10 think it says 18. Ms. Gaskill is communicating with</p> <p>11 you exclusively and DAPL talking point is -- "can you</p> <p>12 call me" is the re line. What were you working on</p> <p>13 with her?</p> <p>14 A. I don't remember specifically what this</p> <p>15 was about, but Amy Gaskill was the public affairs</p> <p>16 officer for the division, so my higher headquarters.</p> <p>17 So any kind of discussion about talking points or</p> <p>18 information that we could release to the media would</p> <p>19 have been discussed with her, most likely.</p> <p>20 Q. I understand that generally, but this is</p> <p>21 an e-mail that's very specific. Let's talk about the</p> <p>22 e-mail, if we could.</p> <p>23 A. Okay.</p> <p>24 Q. I'm asking a question about this e-mail,</p> <p>25 not generally.</p>
<p style="text-align: right;">Page 43</p> <p>1 he was asking people to come to, but in the vicinity</p> <p>2 of the Cannonball River and the pipeline location.</p> <p>3 Q. Is the Corps a major landowner in that</p> <p>4 area?</p> <p>5 A. Yes.</p> <p>6 Q. And who else owns land in that area?</p> <p>7 When you say the vicinity of the Cannonball River, who</p> <p>8 are the other landowners? The Standing Rock Sioux</p> <p>9 Tribe themselves?</p> <p>10 A. So there were tribal lands in that area</p> <p>11 and there were also private landowners.</p> <p>12 Q. Who were the private landowners you're</p> <p>13 referring to?</p> <p>14 A. I don't remember their names. I know the</p> <p>15 gentleman who had the grazing lease, I believe, was --</p> <p>16 his name was mentioned before. I can't recall his</p> <p>17 name, but it was David something.</p> <p>18 Q. And David Meyers had a grazing lease from</p> <p>19 the Corps of Engineers on Corps property; right?</p> <p>20 A. Yes.</p> <p>21 Q. Is that what you're suggesting was a</p> <p>22 private property owner?</p> <p>23 A. I believe he also had private land</p> <p>24 somewhere in that area.</p> <p>25 (Deposition Exhibit 392 was remotely</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Okay. Can you ask that question again?</p> <p>2 Q. The question, again, sir, is what does</p> <p>3 this pertain to?</p> <p>4 A. I mean, it sounds like --</p> <p>5 Q. Have you read the e-mail?</p> <p>6 A. Yes, I have.</p> <p>7 Q. Okay. Please answer my question. What</p> <p>8 does this e-mail pertain to?</p> <p>9 A. Well, from reading this it looks like</p> <p>10 she's trying to answer questions to headquarters, but,</p> <p>11 I mean, I don't know specifically beyond that.</p> <p>12 Q. She's asking for your input, it looks</p> <p>13 like; right?</p> <p>14 A. Yes.</p> <p>15 Q. And what did you give as input?</p> <p>16 A. I mean, I don't recall other than what is</p> <p>17 written here.</p> <p>18 Q. Okay. Colonel, are you aware of whether</p> <p>19 Corps officials referred to protesters on</p> <p>20 Corps-managed land as trespassers in August of 2016?</p> <p>21 A. It sounds likely, yes.</p> <p>22 Q. And what do you base that off of?</p> <p>23 A. Just my recollection of the conversations</p> <p>24 at the time, that we understood that they were -- they</p> <p>25 did not have a permit to be on Corps land.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. Are you aware, Colonel, of what</p> <p>2 protest camps were established on Corps lands that</p> <p>3 were south of the Cannonball River?</p> <p>4 A. I know that there were camps, but I</p> <p>5 cannot remember which named camps they were.</p> <p>6 Q. How about north of the Cannonball River?</p> <p>7 A. I believe the big one north of the</p> <p>8 Cannonball River was the Oceti Sakowin camp.</p> <p>9 Q. Does that go by any other names?</p> <p>10 A. I think the Seven Councils Camp,</p> <p>11 something like that.</p> <p>12 Q. Okay. When you say "big one," what do</p> <p>13 you mean by that?</p> <p>14 A. That was one of the larger camps, from</p> <p>15 what I understand.</p> <p>16 Q. "Large" as in how big?</p> <p>17 A. A couple thousand people at its maximum.</p> <p>18 Q. That was on Corps property?</p> <p>19 A. Yes.</p> <p>20 Q. And did that camp ever receive a permit</p> <p>21 from the Corps of Engineers to be there?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. It was offered, but never completed.</p> <p>25 Q. Okay. And what did the Corps do to</p>	<p style="text-align: right;">Page 48</p> <p>1 ask you about both of these e-mails, the one that</p> <p>2 Mr. Roby sent to you and then your response. So</p> <p>3 Mr. Roby is -- the title of Mr. Roby's e-mail to you</p> <p>4 is "Security office roll." And he sends this just to</p> <p>5 you, and he says, "Sir, it appears I may not be</p> <p>6 sufficiently monitoring and reporting on this DAPL</p> <p>7 issue." He says that on September 14. "I am</p> <p>8 constantly being told by Matt this is all my issue</p> <p>9 since it is being caused by protesters and is a</p> <p>10 security issue. I would say Matt does not understand</p> <p>11 the team concept of managing a non-flood emergency."</p> <p>12 Who is the Matt that he's referring to?</p> <p>13 A. I believe that he is referring to Matt</p> <p>14 Krajewski, spelled Krajewski, who was our emergency</p> <p>15 management officer.</p> <p>16 Q. For the Omaha district?</p> <p>17 A. Correct.</p> <p>18 Q. And so what does Roby mean by "I would</p> <p>19 say Matt does not understand the team concept of</p> <p>20 managing a non-flood emergency"?</p> <p>21 MS. BOBET: Objection; calls for</p> <p>22 speculation.</p> <p>23 A. Yeah. I think Roger Roby's concern was</p> <p>24 that the -- was that Matt Krajewski felt that it</p> <p>25 was -- because it was not a flood, that it was simply</p>
<p style="text-align: right;">Page 47</p> <p>1 monitor the protest camps on Corps property and the</p> <p>2 activities taking place in those camps or coming from</p> <p>3 those camps?</p> <p>4 A. So on just about a daily basis our</p> <p>5 project personnel would drive around the area and look</p> <p>6 at any updates to the situation or changes and then</p> <p>7 our project office personnel were on the phone quite a</p> <p>8 bit with Sheriff Kirchmeier as well.</p> <p>9 (Deposition Exhibit 376 was remotely</p> <p>10 introduced and provided electronically to the court</p> <p>11 reporter.)</p> <p>12 Q. If we could go to Exhibit 376. If you'd</p> <p>13 please read that exhibit, it's two e-mails. It's one</p> <p>14 from Mr. Roby, the security manager of the Omaha</p> <p>15 district, to you and your response to him.</p> <p>16 A. Okay.</p> <p>17 Q. And if you'd read your response to him,</p> <p>18 please.</p> <p>19 A. Can you go up in that e-mail? I can't</p> <p>20 see the top.</p> <p>21 MS. HYMEL: I'm having a problem. Just</p> <p>22 one second.</p> <p>23 THE DEPONENT: Okay.</p> <p>24 A. Okay.</p> <p>25 Q. (BY MR. SEBY) All right. So I'm going to</p>	<p style="text-align: right;">Page 49</p> <p>1 a security office issue. And Mr. Roby feels that it</p> <p>2 is still a consolidated team effort to deal with</p> <p>3 situations like this, whether they're flood or not.</p> <p>4 Q. (BY MR. SEBY) So what does it mean to be</p> <p>5 the security manager of the Omaha district of the</p> <p>6 Corps of Engineers? What is the function of that</p> <p>7 office? Why does it exist?</p> <p>8 A. Several things. Number one, to ensure</p> <p>9 that personnel in the district have appropriate</p> <p>10 clearances for the work they're doing; number two, to</p> <p>11 ensure that the project offices are -- meet the</p> <p>12 requirements of army force protection; and then the</p> <p>13 third is just in general to handle any security</p> <p>14 concerns that come up.</p> <p>15 Q. Security issues and concerns relative to</p> <p>16 Corps property?</p> <p>17 A. As well as other things, yes.</p> <p>18 Q. Does it include security of Corps</p> <p>19 property?</p> <p>20 A. Yes. I would say that falls under the</p> <p>21 scope.</p> <p>22 Q. Okay. Why then, Colonel Startzell, did</p> <p>23 you wave off Roger Roby from going to the DAPL</p> <p>24 protests or to North Dakota?</p> <p>25 MS. BOBET: Objection; misstates</p>

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<p style="text-align: right;">Page 50</p> <p>1 evidence.</p> <p>2 Q. (BY MR. SEBY) You see your e-mail to him,</p> <p>3 "Roger, I don't think this will require you to visit</p> <p>4 up there."</p> <p>5 A. Uh-huh. Yeah. I think I was concerned</p> <p>6 about just sending individuals up there unsupported</p> <p>7 because the effect that he could have had would have</p> <p>8 been somewhat limited just by himself.</p> <p>9 Q. And you say, "I'll have Matt tie-in with</p> <p>10 the EOC there and ensure that he is monitoring." What</p> <p>11 does that mean?</p> <p>12 A. So one of the roles of the emergency</p> <p>13 management office is to coordinate with state</p> <p>14 emergency management offices, which is what I was</p> <p>15 referring to there.</p> <p>16 Q. And so in the abstract was your answer.</p> <p>17 How about specifically with respect to you will ensure</p> <p>18 that he is monitoring? What did Matt monitor?</p> <p>19 A. I think we ended up having someone</p> <p>20 else -- we sent John Voeller to liaise with the state</p> <p>21 instead.</p> <p>22 Q. And John Voeller is who?</p> <p>23 A. John Voeller worked for the Oahe project.</p> <p>24 He was one of the specialists out there at the Oahe</p> <p>25 project.</p>	<p style="text-align: right;">Page 52</p> <p>1 secretary of the army Jo Ellen Darcy was or is?</p> <p>2 MS. BOBET: Objection; asked and</p> <p>3 answered.</p> <p>4 A. Yes, I do.</p> <p>5 Q. (BY MR. SEBY) How about a Lowry Crook?</p> <p>6 A. Yes. I believe he worked up in the ASACW</p> <p>7 office or in the Corps of Engineers civil works</p> <p>8 headquarters, one of those two.</p> <p>9 Q. Did you ever interact with Ms. Darcy or</p> <p>10 Mr. Crook?</p> <p>11 A. No.</p> <p>12 Q. Never?</p> <p>13 MS. BOBET: Objection; asked and</p> <p>14 answered.</p> <p>15 A. Not to my recollection.</p> <p>16 Q. (BY MR. SEBY) Okay. How about an</p> <p>17 individual named Dan Uteck?</p> <p>18 A. I don't recognize that name.</p> <p>19 Q. Okay. As the deputy district commander</p> <p>20 of the Corps overseeing the Oahe projects, when did</p> <p>21 the Corps decide to allow DAPL protesters on its land</p> <p>22 to continue to remain on those lands?</p> <p>23 MS. BOBET: Objection; assumes facts not</p> <p>24 in evidence.</p> <p>25 A. So I think early on, I mean, we</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Is he a park ranger?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Okay. So you utilized resources for a</p> <p>4 liaison -- instead of the Omaha district office, you</p> <p>5 used a park ranger from the project to go and interact</p> <p>6 with the state?</p> <p>7 A. Right.</p> <p>8 Q. Okay. And what did that interaction</p> <p>9 involve?</p> <p>10 A. He would attend meetings, I think, once</p> <p>11 or twice a day. When the state did their emergency</p> <p>12 operation center update, he would attend meetings,</p> <p>13 answer questions on our behalf, and then get</p> <p>14 information from us to answer the state's questions.</p> <p>15 Q. And who directed John Voeller to do that?</p> <p>16 A. I think it was either myself or the</p> <p>17 district manager. One of us were supportive of him</p> <p>18 being the one to go there. I think it was initially</p> <p>19 Eric Stasch's idea that he tie in, and we agreed that</p> <p>20 it was a good choice.</p> <p>21 Q. So instead of having a park ranger at the</p> <p>22 project where protests were going on, you took him</p> <p>23 away from that and sent him to the state EOC?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Do you know who the assistant</p>	<p style="text-align: right;">Page 53</p> <p>1 understood that they were on Corps land, but I don't</p> <p>2 think there was, you know, a conscious decision to let</p> <p>3 them stay there until later.</p> <p>4 Q. (BY MR. SEBY) Later than what?</p> <p>5 A. I mean, I just don't really remember the</p> <p>6 timeline when we had that discussion.</p> <p>7 Q. A discussion of what?</p> <p>8 A. On whether or not they would be allowed</p> <p>9 to stay there.</p> <p>10 Q. Okay. Well, regardless of your timeline,</p> <p>11 I'm asking you a question: When did the Corps decide</p> <p>12 to allow them to remain on the property?</p> <p>13 MS. BOBET: Objection; asked and</p> <p>14 answered.</p> <p>15 A. So as soon as they started camping there,</p> <p>16 you know, obviously we didn't evict them early on, so</p> <p>17 that would be when.</p> <p>18 Q. (BY MR. SEBY) And so are you saying,</p> <p>19 Colonel, that because you decided early on not to</p> <p>20 evict them, that was when the decision to allow them</p> <p>21 to stay was made?</p> <p>22 A. Well, I would say yes, but also the</p> <p>23 special use permit that we were pursuing with them was</p> <p>24 intended to be the follow-up decision tool.</p> <p>25 Q. I thought you said there never was a</p>

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<p style="text-align: right;">Page 54</p> <p>1 special use permit that was issued in final?</p> <p>2 A. Correct. It was offered with the</p> <p>3 expectation that the protesters would fulfill their</p> <p>4 part of the deal.</p> <p>5 Q. So are you saying that you allowed them</p> <p>6 to stay in hopes that they would be able to get a</p> <p>7 permit from you?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Are you aware of whether DAPL</p> <p>10 protesters, using Corps of Engineers land to camp,</p> <p>11 were using that land to organize and prepare for</p> <p>12 leaving Corps property and travel off of Corps</p> <p>13 property?</p> <p>14 A. I think we suspected that some of that</p> <p>15 was happening, but I don't know if we ever saw proof</p> <p>16 of that.</p> <p>17 Q. None?</p> <p>18 A. Like I said, I can't recall specific</p> <p>19 proof for that.</p> <p>20 Q. Can you recall anyone in the Corps or</p> <p>21 your colleagues or anyone in the state telling you</p> <p>22 that there was such instances where people were</p> <p>23 leaving their presence on Corps property to go do</p> <p>24 things elsewhere?</p> <p>25 A. I know there were reports of that, but I</p>	<p style="text-align: right;">Page 56</p> <p>1 travel to private property?</p> <p>2 A. I am aware that there were reports of</p> <p>3 that, yes.</p> <p>4 Q. Yes. Okay. How about to go onto public</p> <p>5 roads and bridges?</p> <p>6 A. Yes.</p> <p>7 Q. And into Bismarck or Mandan, North</p> <p>8 Dakota?</p> <p>9 A. I don't remember specifics about Bismarck</p> <p>10 or Mandan, but they are in the vicinity of those other</p> <p>11 places.</p> <p>12 Q. Do you recall how long protesters were</p> <p>13 present on Corps-managed land?</p> <p>14 A. I believe it was somewhere in the</p> <p>15 neighborhood of six months total.</p> <p>16 Q. Six months total?</p> <p>17 A. Yes.</p> <p>18 Q. Would you be surprised if you were told</p> <p>19 it was closer to nine months?</p> <p>20 A. No, that would not surprise me.</p> <p>21 Q. Okay. Do you recall when the Bureau of</p> <p>22 Indian Affairs got involved in the protests against</p> <p>23 the Dakota Access Pipeline?</p> <p>24 A. I don't.</p> <p>25 Q. Did you interact with anyone from the</p>
<p style="text-align: right;">Page 55</p> <p>1 don't remember the specifics of those reports.</p> <p>2 Q. Okay. And were you ever there in North</p> <p>3 Dakota during the period of the protests?</p> <p>4 A. Personally, no.</p> <p>5 Q. So how else would you know other than</p> <p>6 receiving reports?</p> <p>7 A. That is how information was coming to us,</p> <p>8 through those reports.</p> <p>9 Q. And to you individually, correct, as the</p> <p>10 deputy district commander?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you recall receiving reports</p> <p>13 that DAPL protesters on Corps land were using that</p> <p>14 land to organize and prepare to go onto private</p> <p>15 property?</p> <p>16 MS. BOBET: Objection; asked and answered</p> <p>17 in the prior deposition. I'll just lodge an ongoing</p> <p>18 objection to the extent this issue was already covered</p> <p>19 as to the scope.</p> <p>20 A. Yeah. I think -- can you ask that</p> <p>21 question again one more time?</p> <p>22 Q. (BY MR. SEBY) A third time, sure. I'm</p> <p>23 asking a lot of questions a third time, Colonel. Are</p> <p>24 you aware of whether DAPL protesters used camps on</p> <p>25 Corps land to organize and leave those camps and</p>	<p style="text-align: right;">Page 57</p> <p>1 BIA?</p> <p>2 A. I believe I did have -- I can't remember</p> <p>3 if I talked to them on the phone, but I know it was at</p> <p>4 least some e-mail traffic with their representatives.</p> <p>5 Q. E-mails with you?</p> <p>6 A. Yes.</p> <p>7 Q. And who else from the Bureau of Indian</p> <p>8 Affairs?</p> <p>9 A. From BIA, I don't remember who exactly it</p> <p>10 was, but I know I was talking -- either myself or the</p> <p>11 district manager or my security manager were talking</p> <p>12 with one of their agents.</p> <p>13 Q. Why would your security manager have been</p> <p>14 talking with the BIA agent?</p> <p>15 A. Just to understand the situation on the</p> <p>16 ground as they saw it.</p> <p>17 Q. This is the same Roger Roby, the security</p> <p>18 manager of the Omaha district?</p> <p>19 A. Right.</p> <p>20 Q. After you waved him off that one time in</p> <p>21 the earlier exhibit we talked about, did you ever</p> <p>22 change your mind and dispatch him to North Dakota?</p> <p>23 MS. BOBET: Objection; misstates</p> <p>24 evidence.</p> <p>25 A. Yeah. I mean, what I told him was he</p>

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<p style="text-align: right;">Page 58</p> <p>1 couldn't physically go to North Dakota. I didn't tell</p> <p>2 him that he couldn't coordinate with entities that</p> <p>3 were involved. So I would expect that he would still</p> <p>4 continue his job coordinating with those offices.</p> <p>5 Q. (BY MR. SEBY) And what did he do with</p> <p>6 respect to the BIA on coordination matters?</p> <p>7 A. I don't remember specifics, but I assume</p> <p>8 that he was still coordinating with them to make sure</p> <p>9 that he understood the situation on the ground and</p> <p>10 then to see if there were any assets that they could</p> <p>11 bring to bear on the situation, particularly as it was</p> <p>12 related to convincing the tribes to move protesters to</p> <p>13 tribal land.</p> <p>14 Q. Do you recall the specifics of what you</p> <p>15 discussed with the Bureau of Indian Affairs?</p> <p>16 A. I know that we had discussions with them</p> <p>17 about getting them to dialogue directly with the</p> <p>18 tribal leadership to move protesters onto tribal-owned</p> <p>19 land. And then at one point there was -- I know the</p> <p>20 tribe became concerned that the protest activity was</p> <p>21 going to affect the productivity of their casinos.</p> <p>22 And so they were becoming concerned of the disruptive</p> <p>23 impact of the protesters.</p> <p>24 Q. Okay. I'm going to ask you about the</p> <p>25 special use permit that you mentioned. You worked on</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. Do you know how long the Corps</p> <p>2 sought to work with the Standing Rock Sioux Tribe</p> <p>3 regarding the development of a mutually acceptable</p> <p>4 standing -- special use permit?</p> <p>5 A. I think it was over the course of several</p> <p>6 weeks.</p> <p>7 Q. Several weeks?</p> <p>8 A. Yes.</p> <p>9 Q. Start to finish?</p> <p>10 A. Yes.</p> <p>11 Q. And what do you base that on?</p> <p>12 A. From the discussion during the last</p> <p>13 deposition, I think the timeline was somewhere around</p> <p>14 end of August or early September through October</p> <p>15 before we realized that they would not be able to</p> <p>16 provide the bond and the insurance required.</p> <p>17 Q. So several weeks, maybe actually a month</p> <p>18 and a half?</p> <p>19 A. I mean, I guess it depends on how you</p> <p>20 define "several," but yeah, a couple months.</p> <p>21 Q. "Several" could be more than one, so it</p> <p>22 could be two, but you think actually it was six?</p> <p>23 A. That's -- yeah, that seems reasonable</p> <p>24 based on the last deposition.</p> <p>25 Q. So several, many, six, thereabouts is</p>
<p style="text-align: right;">Page 59</p> <p>1 that, you said? I think you told me you e-mailed it</p> <p>2 to Chairman Archambault in some fashion, but does that</p> <p>3 mean you worked on the special use permit for the</p> <p>4 Standing Rock Sioux Tribe?</p> <p>5 MS. BOBET: I'll just again lodge an</p> <p>6 ongoing objection to this line of questioning which we</p> <p>7 covered extensively in the witness's prior full-day</p> <p>8 deposition.</p> <p>9 A. Yeah. So based on the last deposition, I</p> <p>10 remember seeing an e-mail where I transmitted that to</p> <p>11 Chairman Archambault.</p> <p>12 Q. (BY MR. SEBY) Is that the first time you</p> <p>13 knew anything about the special-use-permit process for</p> <p>14 the Standing Rock Sioux Tribe or were you involved in</p> <p>15 it more than that?</p> <p>16 A. No. I was aware that our office was</p> <p>17 preparing it in coordination with the tribe to offer</p> <p>18 to them, and I probably reviewed it as part of that</p> <p>19 process, but, I mean, I think that's -- that was the</p> <p>20 extent of my involvement. And I was probably</p> <p>21 discussing the permit with Colonel Henderson also.</p> <p>22 Q. And because you were the deputy district</p> <p>23 commander, others in the district you also discussed</p> <p>24 it with?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 your answer?</p> <p>2 A. Okay.</p> <p>3 (Deposition Exhibit 375 was remotely</p> <p>4 introduced and provided electronically to the court</p> <p>5 reporter.)</p> <p>6 Q. If we can go to Exhibit 375, please. So</p> <p>7 this is 375. If you could read, please, that e-mail.</p> <p>8 A. Okay. Should I read it from the back</p> <p>9 forward?</p> <p>10 Q. Yes. That way you know what it talks</p> <p>11 about.</p> <p>12 A. Okay. I think you can go up from here.</p> <p>13 Okay.</p> <p>14 Q. So this first e-mail -- there's two in</p> <p>15 here, and this first e-mail is from Eileen Williamson</p> <p>16 to Amy Gaskill and others. And you're copied on this</p> <p>17 e-mail; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. What is she referring to as "I</p> <p>20 resent the joint statement on Friday," in the third</p> <p>21 paragraph there, "after it was released by the U.S.</p> <p>22 DOJ"?</p> <p>23 MS. BOBET: Objection; foundation, calls</p> <p>24 for speculation.</p> <p>25 Q. (BY MR. SEBY) I wanted you to read the</p>

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<p style="text-align: right;">Page 62</p> <p>1 sentence, Colonel, so I could ask you what joint</p> <p>2 statement do you think she's referring to?</p> <p>3 MS. BOBET: Objection stands. You can</p> <p>4 answer.</p> <p>5 A. Yeah. I recall something about a joint</p> <p>6 statement, but I can't remember if it was between us</p> <p>7 and the tribe or us and the state of North Dakota or</p> <p>8 all three entities.</p> <p>9 Q. (BY MR. SEBY) So you want to read the</p> <p>10 rest of that paragraph and see if that refreshes your</p> <p>11 understanding of what the joint statement was.</p> <p>12 A. Yeah. I don't remember specifically who</p> <p>13 it was between, but us and someone else obviously.</p> <p>14 DOJ, maybe.</p> <p>15 Q. Okay. Yeah. That seems to make sense.</p> <p>16 She goes on to say it was released by the DOJ. I want</p> <p>17 to ask you about some of the topics that</p> <p>18 Ms. Williamson is bringing to your and others in the</p> <p>19 Corps' attention. If you come down to her No. 3, do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And her question No. 3 says, "What are</p> <p>23 the rules with respect to camping at the Beaver Creek</p> <p>24 Area in the east side of the Missouri River in North</p> <p>25 Dakota."</p>	<p style="text-align: right;">Page 64</p> <p>1 speculation.</p> <p>2 A. Are you asking about the violations and</p> <p>3 fines?</p> <p>4 Q. (BY MR. SEBY) Well, that's what she says.</p> <p>5 My question to you, again, is, what is she referring</p> <p>6 to?</p> <p>7 MS. BOBET: Same objection.</p> <p>8 A. Yeah. I don't specifically know, but I'm</p> <p>9 guessing she's referring to any kind of violations and</p> <p>10 fines related to citations under Title 36.</p> <p>11 Q. (BY MR. SEBY) We're here talking about</p> <p>12 the DAPL protests at the Oahe project in the time</p> <p>13 frame we've already talked about. So are you aware of</p> <p>14 whether the Corps of Engineers ever issued any</p> <p>15 citations to anyone on Corps property during that time</p> <p>16 period of March 2016 to March 2017? Any citations at</p> <p>17 all?</p> <p>18 MS. BOBET: Objection; argumentative.</p> <p>19 A. I don't recall any specific citations,</p> <p>20 no.</p> <p>21 Q. (BY MR. SEBY) Okay. How about any fines</p> <p>22 the Corps issued to any protester during that same</p> <p>23 time period on lands within the Oahe project?</p> <p>24 A. No, I'm not aware of any fines levied.</p> <p>25 Q. Okay. And then when she says, "However,</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Uh-huh.</p> <p>2 Q. What is the Beaver Creek area in the east</p> <p>3 side of the Missouri River in North Dakota?</p> <p>4 A. Beaver Creek must have been one of the</p> <p>5 small recreation areas on the river.</p> <p>6 Q. Does it have anything to do with the Oahe</p> <p>7 project?</p> <p>8 A. Yes. I believe it would have been part</p> <p>9 of the Oahe project or potentially part of the</p> <p>10 Garrison project, but more likely Oahe.</p> <p>11 Q. Okay. So she has that as the question</p> <p>12 and an answer and she's saying by sending this to</p> <p>13 you-all that these are her thoughts on responses and</p> <p>14 asking for people to give feedback. Do you recall</p> <p>15 reading this e-mail -- receiving this e-mail and</p> <p>16 reading it?</p> <p>17 A. I don't recall it at that time, but</p> <p>18 clearly I'm on the traffic. So I did receive it.</p> <p>19 Q. So if you look down, she's got a proposed</p> <p>20 answer. The last part of her answer she says, "When</p> <p>21 enforcing Title 36 rules and regulations, the</p> <p>22 preferred approach is education first. Beyond that,</p> <p>23 the list of violations and fines for those violations</p> <p>24 has not been shared." What is she referring to?</p> <p>25 MS. BOBET: Objection; calls for</p>	<p style="text-align: right;">Page 65</p> <p>1 our lack of ability to enforce these rules beyond a</p> <p>2 citation and the public backlash we face if we attempt</p> <p>3 to cite and enforce the rules makes it an even greater</p> <p>4 challenge and may create further issues with</p> <p>5 attempting to enforce with others," what does that</p> <p>6 mean, in your understanding?</p> <p>7 MS. BOBET: Objection; calls for</p> <p>8 speculation.</p> <p>9 A. Yeah. I think so we had limited ability</p> <p>10 to conduct any kind of law enforcement because our</p> <p>11 park rangers were really only authorized to cite</p> <p>12 members of the public. And so we were concerned with</p> <p>13 what would happen if we did cite the protesters and we</p> <p>14 were concerned it would create a greater problem for</p> <p>15 our park rangers.</p> <p>16 Q. (BY MR. SEBY) So if I understand what</p> <p>17 you're saying is the authority the park rangers had --</p> <p>18 limited, is what you said -- was the ability to cite</p> <p>19 people who were in violation of Title 36 rules; right?</p> <p>20 A. Right.</p> <p>21 Q. But you were concerned with them</p> <p>22 exercising that limited authority at all?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. Because we were concerned for their</p>

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<p style="text-align: right;">Page 66</p> <p>1 safety if they were to get around a crowd of people, 2 and we weren't really sure how, you know, a crowd 3 might react to that.</p> <p>4 Q. So that concern was after not citing 5 people for coming there in the first place; right?</p> <p>6 A. Right.</p> <p>7 Q. And then the concern arose because of the 8 number of people that came onto the property, citing 9 people late in the game would be perceived as a threat 10 and a security issue to the individual ranger?</p> <p>11 A. Yes.</p> <p>12 Q. How many rangers did the Corps assign to 13 the Oahe project?</p> <p>14 A. I don't remember specifically, but I 15 think we had somewhere between three and eight at that 16 project. It was a small number.</p> <p>17 Q. And at least one of them, John Voeller, 18 you pulled off and sent to the EOC meetings; right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. If we can come up, please, to the 21 e-mail from you in response to Ms. Williamson's 22 e-mail, please.</p> <p>23 A. Okay.</p> <p>24 Q. Before we do that, if you could look back 25 to Ms. Williamson's e-mail transmitted to that group</p>	<p style="text-align: right;">Page 68</p> <p>1 Ms. Williamson's detailed e-mail to you and questions 2 that she raised in proposed responses that we went 3 over, No. 3, you responded to Eileen, "Good questions. 4 We are have a meeting today at 3 p.m." -- and "today" 5 being September 12, 2016 -- "in the Commander's 6 Conference Room to discuss the special use permit." 7 What special use permit are you referring 8 to?</p> <p>9 A. I believe this was the special use permit 10 that the district commander had discussed with 11 Chairman Archambault basically allowing protesters to 12 be there for their freedom of speech.</p> <p>13 Q. Are you saying there's a permit that 14 allowed people to be on the Corps property?</p> <p>15 A. This is the development of a permit that 16 we were hoping would eventually be processed.</p> <p>17 Q. And was that -- are you referring to the 18 draft permit the Corps was developing for the Standing 19 Rock Sioux Tribe?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So you said to Ms. Williamson, 22 "Please come to that meeting and bring these 23 questions. Good stuff." Do you recall that meeting?</p> <p>24 A. I don't.</p> <p>25 Q. You don't recall a meeting that you</p>
<p style="text-align: right;">Page 67</p> <p>1 which includes you. If you could do that real quick, 2 please.</p> <p>3 A. Okay.</p> <p>4 Q. Look at the distribution on her e-mail, 5 if you would. Do any of those people stand out to you 6 as lawyers advising the Corps?</p> <p>7 A. I don't remember who Doug Garman and 8 Eugene Pawlik were, but the others do not seem like 9 lawyers. The others are not lawyers, but I don't 10 remember who those other two gentlemen are.</p> <p>11 Q. All right. And now go back to your 12 response to Ms. Williamson.</p> <p>13 A. Okay.</p> <p>14 Q. If you could look at the distribution of 15 your response to Ms. Williamson.</p> <p>16 A. Okay.</p> <p>17 Q. Is Mr. O'Hara an attorney?</p> <p>18 A. No.</p> <p>19 Q. Is Ms. Williamson an attorney?</p> <p>20 A. No.</p> <p>21 Q. Okay. I'm not asking you about the 22 content of the nature of your response which was 23 redacted, but you're not an attorney, are you, sir?</p> <p>24 A. No.</p> <p>25 Q. All right. So in response to</p>	<p style="text-align: right;">Page 69</p> <p>1 communicated with Ms. Williamson about, period? Don't 2 recall it?</p> <p>3 MS. BOBET: Objection; asked and 4 answered.</p> <p>5 A. So I had meetings every day with staff, 6 and so I don't recall this particular meeting.</p> <p>7 Q. (BY MR. SEBY) Okay. You don't recall 8 what was discussed with respect to the special use 9 permit being developed?</p> <p>10 A. No, not on this particular day.</p> <p>11 Q. Do you recall anything about this meeting 12 or the issue and discussing it with your staff as 13 deputy district commander?</p> <p>14 MS. BOBET: Objection; asked and 15 answered.</p> <p>16 A. So I've had a -- I had a lot of meetings 17 about the special use permit, but I don't recall what 18 this e-mail is referring to on that day.</p> <p>19 Q. (BY MR. SEBY) You did read her questions 20 and the topics involved in her questions; right?</p> <p>21 A. Yes.</p> <p>22 Q. And you don't recall discussing those 23 with your staff?</p> <p>24 MS. BOBET: Objection; asked and 25 answered.</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. No, I do not.</p> <p>2 Q. (BY MR. SEBY) Okay. If we could go to</p> <p>3 Exhibit 345, please.</p> <p>4 MS. BOBET: I'll note this is another</p> <p>5 document that was produced before the time of Colonel</p> <p>6 Startzell's prior deposition. So my grounds of the</p> <p>7 scope of this reopened deposition will have an ongoing</p> <p>8 objection to this line of questioning and use of this</p> <p>9 exhibit.</p> <p>10 Q. (BY MR. SEBY) Colonel, if you would look</p> <p>11 at, please, this exhibit, which was used in General</p> <p>12 Spellmon's recent deposition, that would be great</p> <p>13 because I want to ask you about it. It starts with an</p> <p>14 e-mail from Scott Spellmon to Donald Jackson and</p> <p>15 copied to Lowry Crook. It's dated September 12. And</p> <p>16 keep going up the chain, if you would, and let Rachel</p> <p>17 know when you're needing to move up so we can keep</p> <p>18 moving.</p> <p>19 A. Okay. You can move up now. Okay.</p> <p>20 Q. All right. Keep going.</p> <p>21 A. Okay. Is there a way you can move that</p> <p>22 to the left on the screen? Thank you. Yeah.</p> <p>23 Perfect. Okay.</p> <p>24 Q. Are you done?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 continuing to work through these issues with the</p> <p>2 applicant. At this point in time, we would like to</p> <p>3 tie the way ahead on the Special Use Permit with the</p> <p>4 overall way ahead as described in the interagency</p> <p>5 memo." Do you see all that?</p> <p>6 A. Yes.</p> <p>7 Q. So the head of the division is talking</p> <p>8 about Colonel Henderson as the district commander and</p> <p>9 you, sir, are the deputy district commander. So I'm</p> <p>10 assuming you were involved in all of this; is that</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 MS. BOBET: Objection; vague.</p> <p>14 Q. (BY MR. SEBY) So you know what he's</p> <p>15 talking about?</p> <p>16 A. I mean, yes, I understand the issues that</p> <p>17 we were getting reports on at the time.</p> <p>18 Q. Okay. Good. So I want to ask you some</p> <p>19 questions about those issues that you just mentioned</p> <p>20 you understand. Let's go back to Spellmon's e-mail,</p> <p>21 second sentence. He's talking about the special use</p> <p>22 permit application that's pending as of September 12.</p> <p>23 And he says, "The most significant issue we are</p> <p>24 dealing with is the information provided on the new</p> <p>25 application." What is he referring to?</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. So I want to have you please draw</p> <p>2 your attention to the third e-mail in the chain. If</p> <p>3 you start counting the oldest -- the first is the</p> <p>4 oldest coming forward, it would be number three in</p> <p>5 that chain. And it's from at the time Brigadier</p> <p>6 General Scott Spellmon, who was the commanding general</p> <p>7 of northwest division, which oversaw several districts</p> <p>8 which included the Omaha district. He wrote to</p> <p>9 Mr. Crook in response to the e-mails below.</p> <p>10 On September 12 Mr. Crook had asked below</p> <p>11 there about, quote, Has there been any more</p> <p>12 development on the special use permit application that</p> <p>13 is under review? And Brigadier General Spellmon</p> <p>14 responds to him saying that Colonel Henderson has not</p> <p>15 taken action yet on the application -- and I think</p> <p>16 that's the Standing Rock Sioux Tribe unless you</p> <p>17 correct me -- application for special use permit.</p> <p>18 Then he says, "The most significant</p> <p>19 issue" -- on September 12 -- "we are dealing with is</p> <p>20 the information provided on the new application does</p> <p>21 not match facts on the ground. For example, at the</p> <p>22 sites there is ongoing littering, dumping, destruction</p> <p>23 of grazing land, unauthorized structures, and several</p> <p>24 hundred more people above and beyond what the</p> <p>25 application addresses. Colonel Henderson is</p>	<p style="text-align: right;">Page 73</p> <p>1 MS. BOBET: Objection; calls for</p> <p>2 speculation.</p> <p>3 A. Yeah. I don't know what "new</p> <p>4 application" means because I don't recall more than</p> <p>5 one application for that site.</p> <p>6 Q. (BY MR. SEBY) What does he mean by the</p> <p>7 "application does not match facts on the ground"?</p> <p>8 MS. BOBET: Objection; calls for</p> <p>9 speculation.</p> <p>10 A. Yeah. My guess is what he's referring to</p> <p>11 is the requirements for the permit would not be met at</p> <p>12 that point in time, given what we were seeing from</p> <p>13 reports on the ground.</p> <p>14 Q. (BY MR. SEBY) Why?</p> <p>15 A. Well, because his next sentence, there</p> <p>16 was littering going on that we were aware of. They</p> <p>17 had tents and other kinds of makeshift structures up,</p> <p>18 and the grazing land was not meant to be part of the</p> <p>19 application. So I think that's what he's referring</p> <p>20 to. And so those would be -- those would not meet the</p> <p>21 requirements of the special use permit.</p> <p>22 Q. So the application was a mismatch in what</p> <p>23 it requested with what you saw on the ground?</p> <p>24 A. Yes.</p> <p>25 Q. This is September 12, 2016. Do you</p>

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<p style="text-align: right;">Page 74</p> <p>1 recall how many days later you wrote to Chairman</p> <p>2 Archambault that you told me about sending him a</p> <p>3 proposed special use permit?</p> <p>4 A. No, I don't remember how many days later</p> <p>5 that was.</p> <p>6 Q. Within a week?</p> <p>7 A. Okay.</p> <p>8 Q. It's a question. I'm not testifying.</p> <p>9 You are. Is it your position that it was less than a</p> <p>10 week that you sent it to Chairman Archambault?</p> <p>11 A. I don't remember what day that was, but</p> <p>12 it's possible.</p> <p>13 Q. Okay. So in that period of time when you</p> <p>14 did that, rolling back to September 12, a few days</p> <p>15 earlier, how did you resolve these issues?</p> <p>16 A. I don't think the issues were resolved.</p> <p>17 Q. So why did you send them the proposed</p> <p>18 permit?</p> <p>19 A. Our hope was in dialogue with the tribe</p> <p>20 that they would be able to take care of some of these</p> <p>21 actions and clean up some of these actions themselves,</p> <p>22 and that's what Colonel Henderson had been working</p> <p>23 towards for several weeks.</p> <p>24 MR. SEBY: Let's take a five-minute</p> <p>25 break. I know we've been going for an hour and a</p>	<p style="text-align: right;">Page 76</p> <p>1 questions on the grounds of the scope of today.</p> <p>2 Q. (BY MR. SEBY) Tell me when you're done</p> <p>3 reading it, please.</p> <p>4 A. Okay. I will.</p> <p>5 Q. Thank you.</p> <p>6 A. Can you scroll down, please. Okay.</p> <p>7 That's perfect. Okay. Can you continue to scroll</p> <p>8 down. Thank you. Okay.</p> <p>9 Q. You done?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Does this clarify for you what a</p> <p>12 joint statement -- do you recall this joint statement?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And it's a joint statement here --</p> <p>15 per the letterhead and the heading on this document,</p> <p>16 joint statement from the Department of Justice, the</p> <p>17 Department of the Army, and the Department of the</p> <p>18 Interior regarding the Standing Rock Sioux Tribe</p> <p>19 versus Corps of Engineers. And then it talks about</p> <p>20 the just-issued district court opinion finding the</p> <p>21 Corps of Engineers in compliance with the National</p> <p>22 Historic Preservation Act, but saying that the army's</p> <p>23 determination authorizing construction of the pipeline</p> <p>24 underneath the river would be reconsidered</p> <p>25 nonetheless. Do you see that?</p>
<p style="text-align: right;">Page 75</p> <p>1 half, and I don't know about you, sir, but I could</p> <p>2 stretch my legs for a minute. Five minutes sound</p> <p>3 good?</p> <p>4 THE DEPONENT: Sounds good.</p> <p>5 THE VIDEOGRAPHER: Going off the record.</p> <p>6 The time is 4:49 p.m. UTC, 11:49 a.m. Central.</p> <p>7 (Recess taken, 10:49 a.m. Mountain to</p> <p>8 10:56 a.m. Mountain.)</p> <p>9 THE VIDEOGRAPHER: Back on the record.</p> <p>10 The time is 4:56 p.m. UTC, 11:56 a.m. Central.</p> <p>11 Q. (BY MR. SEBY) Colonel Spellmon -- pardon</p> <p>12 me. Colonel Startzell, I wanted to ask you -- just to</p> <p>13 clarify, earlier we were talking about a joint</p> <p>14 statement and references to a DOJ and the Corps, but</p> <p>15 there was some confusion, I think, about what that</p> <p>16 joint statement was referring to. So I want to call</p> <p>17 your attention to Exhibit 344, please. If we could</p> <p>18 look at the attachment to this exhibit, please. And</p> <p>19 blow it up. If you would take a moment and read that,</p> <p>20 please. It's a document on Department of Justice</p> <p>21 letterhead dated September 9, 2016.</p> <p>22 MS. BOBET: I'll just note this is</p> <p>23 another document that was produced prior to the</p> <p>24 Lieutenant Colonel's original deposition in November.</p> <p>25 So we'll object to the use of the exhibit and</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you recall that development?</p> <p>3 A. Yes. Now that I read this, yes.</p> <p>4 Q. Okay. Before you saw this official joint</p> <p>5 statement, were you involved in discussing that issue,</p> <p>6 the content of this joint statement?</p> <p>7 A. I don't believe I was -- I may have been</p> <p>8 aware that this -- that the discussion was happening</p> <p>9 at higher echelons, but I don't recall being involved</p> <p>10 in drafting any of this.</p> <p>11 Q. Okay. So are you saying you were aware</p> <p>12 of it before it was issued?</p> <p>13 A. Yes. I was aware that there would be a</p> <p>14 joint statement.</p> <p>15 Q. Did the fact that it was released without</p> <p>16 your development of it or involvement -- did that</p> <p>17 frustrate you?</p> <p>18 A. I mean, I don't think it was my place to</p> <p>19 be frustrated, but I believe that leadership -- either</p> <p>20 Colonel Henderson or Corps of Engineers leadership was</p> <p>21 involved in drafting this.</p> <p>22 Q. So you're saying Colonel Henderson knew</p> <p>23 about it prior to its release?</p> <p>24 A. I believe he did.</p> <p>25 Q. How about Brigadier General Spellmon,</p>

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<p style="text-align: right;">Page 78</p> <p>1 Henderson's boss?</p> <p>2 A. Yeah. He was aware that this was going</p> <p>3 to be released as well.</p> <p>4 Q. Okay. With respect to the several</p> <p>5 thousand protesters and the eight to nine months that</p> <p>6 they occupied Corps lands, how many Title 36 or other</p> <p>7 citations did the Corps issue to DAPL protesters on</p> <p>8 Corps lands?</p> <p>9 MS. BOBET: Objection; asked and</p> <p>10 answered, assumes facts.</p> <p>11 A. I don't specifically remember any.</p> <p>12 Q. (BY MR. SEBY) Any? So zero?</p> <p>13 A. Correct.</p> <p>14 Q. Colonel Startzell, do you recall anyone</p> <p>15 telling you not to issue citations to the protesters?</p> <p>16 A. No.</p> <p>17 Q. Then why didn't the Corps issue any</p> <p>18 citations to trespassers on its property, as you said?</p> <p>19 MS. BOBET: Objection; misstates</p> <p>20 testimony.</p> <p>21 A. So as I mentioned before, we were</p> <p>22 concerned about the safety of our park rangers should</p> <p>23 they do that.</p> <p>24 Q. (BY MR. SEBY) To your knowledge, did the</p> <p>25 Corps ever take any steps to communicate to the</p>	<p style="text-align: right;">Page 80</p> <p>1 read this exhibit from the back forward. The first</p> <p>2 part of this exhibit e-mail chain, it's five pieces,</p> <p>3 but it's a two-page e-mail string. It is from Joel</p> <p>4 Rostberg at Morton County to Morton County people and</p> <p>5 State of North Dakota people. I see it's a large</p> <p>6 group, FBI individuals and DOJ individuals, other</p> <p>7 counties in North Dakota, officials and so on. So a</p> <p>8 large state/federal/county group there; right? Morton</p> <p>9 County is communicating that to the United States and</p> <p>10 colleagues in North Dakota. So it's an operational --</p> <p>11 do you know what op ord stands for?</p> <p>12 A. Operational order.</p> <p>13 Q. Okay. And what is an operational order,</p> <p>14 to your understanding? I know this isn't from you.</p> <p>15 As a term, do you understand what that means?</p> <p>16 A. For the army it means a written order,</p> <p>17 and I'm guessing it meant the same thing for the</p> <p>18 state.</p> <p>19 Q. Okay. And this gentleman that sent this,</p> <p>20 Mr. Rostberg, his signature block on the e-mail says</p> <p>21 that he is an assistant emergency manager for Morton</p> <p>22 County. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So this was sent to a bunch of</p> <p>25 federal officials, including individuals in the Corps.</p>
<p style="text-align: right;">Page 79</p> <p>1 protesters physically on Corps land that they needed</p> <p>2 to leave?</p> <p>3 A. Yes, I believe we did, but I can't</p> <p>4 remember the vehicle for that. It probably would have</p> <p>5 involved the project office personnel and rangers</p> <p>6 telling them they weren't authorized to be there.</p> <p>7 Q. So are you speculating or do you know?</p> <p>8 A. That is speculation.</p> <p>9 Q. Okay. So, Colonel, do you believe that</p> <p>10 by late September of 2016 when you were a district --</p> <p>11 deputy district commander watching the issue unfold in</p> <p>12 North Dakota on Corps property, the protesters located</p> <p>13 on Corp land, that those protests had gotten out of</p> <p>14 control? Do you believe that?</p> <p>15 A. Yes, I believe they were beyond what was</p> <p>16 acceptable.</p> <p>17 Q. All right. And, in fact, if we could</p> <p>18 turn to Exhibit 318, please.</p> <p>19 MS. BOBET: This is another exhibit that</p> <p>20 was produced before Lieutenant Colonel's prior</p> <p>21 deposition. So, again, we'll lodge another objection</p> <p>22 on the basis of the limited scope of this deposition</p> <p>23 to use of the exhibit and the line of questions about</p> <p>24 it.</p> <p>25 Q. (BY MR. SEBY) You can take a moment and</p>	<p style="text-align: right;">Page 81</p> <p>1 One of them was Todd Lindquist, who forwarded it on in</p> <p>2 the second e-mail of this chain to Dean Danzeisen.</p> <p>3 Does that name ring a bell?</p> <p>4 A. I believe that name is one that I saw a</p> <p>5 few minutes ago, but yeah, I don't really -- did not</p> <p>6 recognize that name, no.</p> <p>7 Q. Okay. Would you agree that it's the --</p> <p>8 that gentleman is the sheriff of Mercer County, North</p> <p>9 Dakota, at least at this time?</p> <p>10 A. I think that's -- a few minutes ago the</p> <p>11 exhibit you showed, I believe that was correct.</p> <p>12 Q. Okay. And then Mr. Lindquist also</p> <p>13 forwards that e-mail to Mr. Fink, a Corps individual,</p> <p>14 as we talked about before. Then Todd Lindquist says,</p> <p>15 "Keith, I haven't gotten a chance to read the attached</p> <p>16 OPORD regarding DAPL. I'm currently busy reviewing</p> <p>17 the 776 page ECP I'm supposed to sign today for the</p> <p>18 land transfer to the Three Affiliated Tribes."</p> <p>19 And then the next e-mail, fourth in the</p> <p>20 chain of five, is from Fink sending it up to Colonel</p> <p>21 Henderson, the district commander, and to you, the</p> <p>22 deputy district commander. It says, "Sir, the</p> <p>23 attached is a law enforcement update on the DAPL</p> <p>24 Protest Camps" dated September 23, 2016.</p> <p>25 And you are the other -- the last person</p>

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<p style="text-align: right;">Page 82</p> <p>1 to respond in this chain of e-mails. And you reply to</p> <p>2 Mr. Fink, Colonel Henderson, and Thomas Tracy, and you</p> <p>3 say, "Thanks, Keith. I'll include some of the</p> <p>4 highlights in the DAPL update on Monday. All of this</p> <p>5 information basically confirms the Commander's</p> <p>6 assessment that the camps are growing out of SRST's</p> <p>7 control, and the Chairman is probably going to try to</p> <p>8 use the SUP as a way to regain control of what he sees</p> <p>9 as legitimate protesters."</p> <p>10 Do you remember sending that e-mail?</p> <p>11 A. I don't remember sending it, but yeah, it</p> <p>12 looks like my words.</p> <p>13 Q. Yeah. So you're saying to Mr. Fink that</p> <p>14 what Morton County shared with a number of federal</p> <p>15 representatives from multiple agencies, including the</p> <p>16 FBI, the Corps, and the Department of Justice confirms</p> <p>17 the commander -- I'm quoting you, sir, Confirms the</p> <p>18 Commander's assessment that the camps are growing out</p> <p>19 of the Standing Rock Sioux Tribe's control, and the</p> <p>20 Chairman is probably going to try to use the SUP on it</p> <p>21 as a way to regain control of what he sees as a</p> <p>22 legitimate protest. That's on September 25, 2016.</p> <p>23 So my question is, after you said you</p> <p>24 recall stating it, was, do you have any reason to</p> <p>25 disagree with Colonel Henderson's assessment that the</p>	<p style="text-align: right;">Page 84</p> <p>1 here; right?</p> <p>2 A. Yes.</p> <p>3 Q. Was it the Standing Rock Sioux Tribe's</p> <p>4 responsibility to keep control of the protests on</p> <p>5 Corps property?</p> <p>6 A. So our expectation was, because he was</p> <p>7 pursuing a special use permit, that the permit would</p> <p>8 be granted for activities that he could control. And</p> <p>9 that's why -- I believe that's why it came up in this</p> <p>10 e-mail.</p> <p>11 Q. Okay.</p> <p>12 A. And that he had initially called for some</p> <p>13 of the protesters to comment.</p> <p>14 Q. And this all was on September 25, 2016,</p> <p>15 right, when you made that observation with respect to</p> <p>16 Colonel Henderson's assessment?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So my question is after you -- if</p> <p>19 Colonel Henderson did that earlier and you</p> <p>20 acknowledged it in this September 25 e-mail, after</p> <p>21 that did the Corps or the United States ever take any</p> <p>22 responsibility for what was happening after that?</p> <p>23 MS. BOBET: Objection; vague, calls for</p> <p>24 speculation, foundation.</p> <p>25 Q. (BY MR. SEBY) To your knowledge, as the</p>
<p style="text-align: right;">Page 83</p> <p>1 camps on Corps land were out of control by late</p> <p>2 September of 2016?</p> <p>3 A. No. I think our assessment at that time</p> <p>4 was that Chairman Archambault was not able to control</p> <p>5 the people coming to the camps anymore. I would say</p> <p>6 that's correct.</p> <p>7 Q. Okay. So that was stated, at least in</p> <p>8 this e-mail, on September 25. Did that realization</p> <p>9 occur on that same day or previously, prior to that?</p> <p>10 A. It was probably a series of events</p> <p>11 leading up to that.</p> <p>12 Q. Okay. And do you recall discussing those</p> <p>13 circumstances with Colonel Henderson?</p> <p>14 A. Yes. I don't remember specific</p> <p>15 conversations, but I know that we had had discussions</p> <p>16 about that.</p> <p>17 Q. Sure. And what are the series of events</p> <p>18 that led up to September 25 that caused you to say</p> <p>19 what you did in this e-mail?</p> <p>20 A. I think we just -- it became more -- we</p> <p>21 became more aware that many of the protesters were not</p> <p>22 tribal members anymore and the chairman was starting</p> <p>23 to become nervous about his ability to control their</p> <p>24 activity.</p> <p>25 Q. Okay. So we're talking about Corps land</p>	<p style="text-align: right;">Page 85</p> <p>1 question is obviously phrased.</p> <p>2 MS. BOBET: Same objections.</p> <p>3 A. So I know that it was of concern to us in</p> <p>4 our problem because it was on government-owned land,</p> <p>5 but our authorities to influence it were limited.</p> <p>6 Q. (BY MR. SEBY) Okay. That's -- what</p> <p>7 authority then -- what ability does the Corps have to</p> <p>8 address trespassers that come to its attention on its</p> <p>9 property?</p> <p>10 MS. BOBET: Objection; asked and</p> <p>11 answered.</p> <p>12 A. So the authorities that we had were the</p> <p>13 limited authority of the park rangers, as discussed</p> <p>14 before, and then I think in the future we eventually</p> <p>15 closed the Corps land north of the river to try to</p> <p>16 control where the protesters were camping.</p> <p>17 Q. (BY MR. SEBY) Perhaps on November 25 when</p> <p>18 that was done?</p> <p>19 A. That sounds about right.</p> <p>20 Q. Okay. So on September 25 you stated what</p> <p>21 we just discussed, and then not until November 25, two</p> <p>22 months later to the day, is when you decided to close</p> <p>23 the land; right?</p> <p>24 A. That sounds right.</p> <p>25 Q. Okay. Did you ever ask the United States</p>

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<p style="text-align: right;">Page 86</p> <p>1 Department of Justice to enforce Title 36 citations in 2 federal court?</p> <p>3 A. I don't think we specifically asked DOJ 4 to enforce that, not that I recall.</p> <p>5 Q. Did you ever discuss doing so, or try to?</p> <p>6 A. So I think at some point we had asked the 7 Department of Justice for assistance with law 8 enforcement capabilities. I know that the commander 9 had had dialogue with others above him about trying to 10 get some more resources to the site to assist with 11 that, but I don't know if that -- I don't recall if 12 that took the form of a formal request or if it was 13 just verbal and e-mail communications.</p> <p>14 Q. How about did you or Colonel Henderson or 15 Brigadier General Spellmon ever ask the state of North 16 Dakota to come onto the property because you had 17 trespassers there that you wanted to be evicted?</p> <p>18 MS. BOBET: Objection; foundation, 19 personal knowledge.</p> <p>20 A. Yeah. I don't remember if we formally 21 asked that of them. I don't remember formally asking 22 them.</p> <p>23 (Deposition Exhibit 381 was remotely 24 introduced and provided electronically to the court 25 reporter.)</p>	<p style="text-align: right;">Page 88</p> <p>1 Title 36 violations beyond the citation process."</p> <p>2 When Title 36 violations occur, the Corps is 3 authorized to write citations. "However, any further 4 action including resulting actions for nonpayment of 5 citations requires process which may include local law 6 enforcement or department of justice involvement."</p> <p>7 Next paragraph, "If we can talk to 8 process without throwing others under the bus, then at 9 least the notion that, quote, we do not have the 10 physical ability to remove the protesters, end quote, 11 makes more sense."</p> <p>12 Do you recall having that dialogue with 13 Ms. Williamson?</p> <p>14 A. I don't, but it's likely that I did, 15 based on this e-mail.</p> <p>16 Q. So you recall or think it was likely that 17 you talked about it as deputy district commander, but 18 you don't recall any details about it?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. All right. If we can go to 21 Exhibit 347, please. So this is an e-mail chain that 22 you're not copied on, but I'm going to ask you about 23 it because it's a series of communications. And you 24 may have seen it. I don't know. But you're not 25 copied on it. I just want to acknowledge that. And</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. (BY MR. SEBY) Okay. If we could turn to 2 Exhibit 381, please. So this is an e-mail. 3 Thankfully, it's only one e-mail and it's from 4 Ms. Eileen Williamson, who's the public affairs 5 specialist in the Omaha district, e-mailed you on 6 October 11, and only you.</p> <p>7 And she's talking about that joint 8 statement that we discussed earlier and that she's 9 getting calls from the public, quote, concerned about 10 construction at the camp on Corps property. Reports 11 include fence construction, structures being built. 12 Right now we are unable to respond to these queries.</p> <p>13 Why do you think she says right now we 14 are not able to respond to these queries?</p> <p>15 MS. BOBET: Objection; calls for 16 speculation.</p> <p>17 A. I don't really know.</p> <p>18 Q. (BY MR. SEBY) Okay. So then she goes on 19 in the next paragraph -- this is an e-mail to you -- 20 "Would like to have leadership consider coordinating 21 with HQ." So I think she's possibly referring to -- 22 and you tell me if I'm wrong. She's referring to 23 leadership in the district or the division. "Consider 24 coordinating with HQ to have a vetted message with 25 respect to the process we must follow for addressing</p>	<p style="text-align: right;">Page 89</p> <p>1 it's a series of communications that start with Major 2 General Donald Jackson. Do you know who he is?</p> <p>3 A. Yes.</p> <p>4 Q. And who is he, sir?</p> <p>5 A. General Jackson was the general in charge 6 of civil works, the civil works mission for the Corps 7 of Engineers at that time.</p> <p>8 Q. The whole Corps?</p> <p>9 A. Yes. For the civil works portion of the 10 Corps mission.</p> <p>11 Q. Okay. And he writes to Scott Spellmon, 12 brigadier general of the district -- pardon me -- the 13 division commander. Can you provide an update to 14 John's -- he's talking about Colonel Henderson, I 15 think -- last message. Interested in the outcome of 16 the tribal elder decision on camp support and the 17 proposed winter move to the reservation. The chief 18 has called -- has a call with Senator Hoeven tomorrow.</p> <p>19 Then Spellmon responds to General Jackson 20 and General Jackson acknowledges it. And General 21 Jackson says, I met Archambault briefly. And then 22 Spellmon responds to that saying -- he's talking about 23 the Dakota Access Pipeline construction, and it goes 24 on.</p> <p>25 And then, interestingly enough, General</p>

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<p style="text-align: right;">Page 90</p> <p>1 Jackson forwards that e-mail communication with</p> <p>2 Spellmon up the chain to Jo Ellen Darcy, who is the</p> <p>3 assistant secretary of the Army for civil works,</p> <p>4 you've said, and Todd Semonite, who I believe at that</p> <p>5 time was the chief of engineers at the Corps of</p> <p>6 Engineers, the whole thing; right?</p> <p>7 A. Yes.</p> <p>8 Q. So then Jackson says, "Madam Secretary</p> <p>9 and Chief. Wanted you both to have this in advance of</p> <p>10 your engagements tomorrow." And then to that, General</p> <p>11 Jackson responds -- replies all. Pardon me. He</p> <p>12 took -- he replied to everybody, but took Ms. Darcy</p> <p>13 off. And he talks about wanting to understand a few</p> <p>14 issues.</p> <p>15 If you look at No. 3, he's titled it in</p> <p>16 all capital letters "Trespassing." What is our</p> <p>17 position to Congress why the Corps has allowed</p> <p>18 trespassing and camping on government land on the</p> <p>19 north side, effectively condoning the tribes to</p> <p>20 violate the law both on our land as well as other</p> <p>21 lands. You see that?</p> <p>22 A. Yes.</p> <p>23 Q. So he's asking a question. Do you</p> <p>24 disagree with the way he phrased the question at all?</p> <p>25 A. No. I mean, I don't know if -- are you</p>	<p style="text-align: right;">Page 92</p> <p>1 little bit. Okay.</p> <p>2 Q. Okay. So here on October 13 your boss's</p> <p>3 boss -- and by that I mean you're the deputy district</p> <p>4 commander of the Omaha district. Omaha district is</p> <p>5 part of the northwest division, which is multiple</p> <p>6 districts. Spellmon is the head of that and he's</p> <p>7 reporting to the chief of engineers of the Corps and</p> <p>8 Major General Donald Jackson, head of the civil works</p> <p>9 division of the Corps, responding to the chief of the</p> <p>10 Corps of Engineers' questions, one of which was</p> <p>11 trespass.</p> <p>12 And then with respect to trespass --</p> <p>13 these responses are numbered in response to Chief</p> <p>14 Semonite's questions. No. 3, which is trespassing,</p> <p>15 "Both Colonel Henderson and I shared with Governor</p> <p>16 Dalrymple" -- that's the governor of North Dakota --</p> <p>17 "and Senator Hoeven" -- that's a United States senator</p> <p>18 from North Dakota -- "that it is best to leave the</p> <p>19 camps on Corps property until the Chairman can make</p> <p>20 the move onto tribal property. We acknowledge the</p> <p>21 trespassing."</p> <p>22 On October 13, 2016, do you have any</p> <p>23 reason to disagree with Brigadier General Scott</p> <p>24 Spellmon, commanding general of the northwestern</p> <p>25 division of the Corps of Engineers' statement</p>
<p style="text-align: right;">Page 91</p> <p>1 asking why -- are you asking if I disagree with it? I</p> <p>2 don't understand.</p> <p>3 Q. I'm asking if you disagree with anything</p> <p>4 that Major General Jackson -- the phrasing he has used</p> <p>5 as asking a question that he wants more information on</p> <p>6 on October 13, 2016, what is our position why the</p> <p>7 Corps has allowed trespassing and camping on</p> <p>8 government land to the north side, effectively</p> <p>9 condoning the tribes to violate the law, both on our</p> <p>10 land as well as other lands. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Is he wrong?</p> <p>13 A. No, I don't think so.</p> <p>14 Q. Okay. So he goes on to say, When is the</p> <p>15 Corps going to do something to get this under control?</p> <p>16 While many might move to other camps, some will stay</p> <p>17 just to embolden the effort. Is there some event that</p> <p>18 will cause us, the Corps, to ask the sheriff to</p> <p>19 enforce the law?</p> <p>20 Okay. So let's go to the next e-mail in</p> <p>21 the chain. And it's a lengthy one. You can read the</p> <p>22 whole thing because I don't want you to feel out of</p> <p>23 context, but you tell me if you want to do that and</p> <p>24 I'll pause.</p> <p>25 A. Okay. Okay. Can you scroll down a</p>	<p style="text-align: right;">Page 93</p> <p>1 acknowledging the trespassing on Corps property?</p> <p>2 A. No.</p> <p>3 Q. Okay. Do you think that Spellmon was</p> <p>4 referring to them as trespassers because the</p> <p>5 protesters on the Corps property were there without</p> <p>6 first obtaining a special use permit?</p> <p>7 MS. BOBET: Objection; calls for</p> <p>8 speculation.</p> <p>9 A. Yeah. I think the duration of their</p> <p>10 stay, plus the fact that they had not gotten a permit</p> <p>11 together.</p> <p>12 Q. (BY MR. SEBY) So here on October 13, that</p> <p>13 would have been approximately a month after you</p> <p>14 offered a permit to Chairman Archambault; right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. It sat with them for a long time</p> <p>17 and they never pulled it together and got it</p> <p>18 finalized, which was on them; right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And the Corps waited while they</p> <p>21 tried, right, or purported to try and told you they</p> <p>22 were?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So did you recall being part of</p> <p>25 any discussions asking for other federal resources to</p>

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<p style="text-align: right;">Page 94</p> <p>1 help the Corps?</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me about that?</p> <p>4 A. Yeah. So I don't recall a lot of</p> <p>5 details. What I know is we had talked about the</p> <p>6 potential for federal law enforcement to assist with</p> <p>7 this situation. And I believe that we had sent</p> <p>8 requests through headquarters USACE for either U.S.</p> <p>9 marshals or some other BIA assistance to come to the</p> <p>10 area.</p> <p>11 Q. And did that assistance ever arrive?</p> <p>12 A. I don't think so, or at least not in a</p> <p>13 meaningful way. There may have been some</p> <p>14 additional -- I think the border patrol actually sent</p> <p>15 some additional personnel to the state of North</p> <p>16 Dakota, but I don't think there was a large increase</p> <p>17 in law enforcement beyond that.</p> <p>18 Q. And what did the border patrol do and</p> <p>19 when did they do it?</p> <p>20 A. I don't even remember the details of what</p> <p>21 they were able to contribute.</p> <p>22 Q. Or how long?</p> <p>23 A. Right. Same thing. I do not remember</p> <p>24 any details. I think their authorities were limited</p> <p>25 based on the fact that they're border patrol. So I</p>	<p style="text-align: right;">Page 96</p> <p>1 facilitate some kind of additional resources coming to</p> <p>2 support the effort.</p> <p>3 Q. And do you know whether or not Colonel</p> <p>4 Henderson's efforts to move it up the chain in the</p> <p>5 Corps had any success?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know whether or not the Corps ever</p> <p>8 made such requests outside of the Corps for other</p> <p>9 federal resources?</p> <p>10 MS. BOBET: Objection; vague.</p> <p>11 A. Yeah. I am not sure. I don't know.</p> <p>12 Q. (BY MR. SEBY) So you don't know if it got</p> <p>13 out of the Corps even?</p> <p>14 MS. BOBET: Objection; asked and</p> <p>15 answered.</p> <p>16 A. Yeah. I'm not sure how far the request</p> <p>17 went.</p> <p>18 Q. (BY MR. SEBY) Okay. Thank you. And</p> <p>19 indeed, Colonel Henderson's thought was to try and</p> <p>20 get -- make it broader than just the Corps asking for</p> <p>21 federal law enforcement resources; is that correct?</p> <p>22 MS. BOBET: Objection; calls for</p> <p>23 speculation, foundation.</p> <p>24 A. Yeah. I mean, I think he was looking for</p> <p>25 any help that we could get, so whatever form that</p>
<p style="text-align: right;">Page 95</p> <p>1 can't remember what they were able to contribute to</p> <p>2 that.</p> <p>3 Q. Do you think there were any resources in</p> <p>4 the United States government that could have assisted</p> <p>5 the Corps during this eight-month or nine-month-long</p> <p>6 process?</p> <p>7 MS. BOBET: Objection; foundation, calls</p> <p>8 for speculation.</p> <p>9 A. I'm sure there was, but I don't know what</p> <p>10 the most appropriate resource would have been.</p> <p>11 Q. (BY MR. SEBY) Okay. Other agencies</p> <p>12 perhaps in the United States government?</p> <p>13 MS. BOBET: Same objections.</p> <p>14 A. Yes.</p> <p>15 Q. (BY MR. SEBY) Okay. You were nodding</p> <p>16 your head. I just want to make sure that we capture</p> <p>17 that, as we just discussed. Is that a yes?</p> <p>18 A. Yes. And that's why we had requested</p> <p>19 some assistance in the form of U.S. marshals or some</p> <p>20 other asset like that.</p> <p>21 Q. And so I want to make sure I understand</p> <p>22 your answer. Are you saying that you asked up the</p> <p>23 chain in the Corps to make that request?</p> <p>24 A. Yeah. From my recollection, Colonel</p> <p>25 Henderson had asked through headquarters if they could</p>	<p style="text-align: right;">Page 97</p> <p>1 took. I wasn't really in the conversation.</p> <p>2 Q. (BY MR. SEBY) I'm sorry. Do you know,</p> <p>3 was he trying to consider asking for North Dakota to</p> <p>4 join him in that request up the chain?</p> <p>5 A. I don't recall specifically mentions of</p> <p>6 North Dakota, but I'm sure any assistance would have</p> <p>7 been welcome.</p> <p>8 Q. Are you aware personally whether or not</p> <p>9 the governor and the county and agencies in the state</p> <p>10 of North Dakota previously and repeatedly asked the</p> <p>11 United States in different respects for federal law</p> <p>12 enforcement assistance or resources?</p> <p>13 MS. BOBET: Assumes facts.</p> <p>14 A. I know on at least one occasion they</p> <p>15 requested assistance from the U.S. government.</p> <p>16 Q. (BY MR. SEBY) Do you know whether or not</p> <p>17 assistance was ever forthcoming based upon that</p> <p>18 request?</p> <p>19 A. I don't believe so, or at least not -- at</p> <p>20 least not enough resources to deal with the issue.</p> <p>21 (Deposition Exhibit 405 was remotely</p> <p>22 introduced and provided electronically to the court</p> <p>23 reporter.)</p> <p>24 Q. Sure. Okay. If we could turn to</p> <p>25 Exhibit 405, please. This is an exhibit that is two</p>

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<p style="text-align: right;">Page 98</p> <p>1 pages and has five e-mail components to it. Could you</p> <p>2 take the time to start at the bottom, the beginning,</p> <p>3 and move up and read it in completion and let me know</p> <p>4 when you've done that. Of course, let Ms. Hymel know</p> <p>5 when you're ready to advance up the chain.</p> <p>6 A. Okay. Can you scroll up, please. Okay.</p> <p>7 Please keep going. Okay. Okay. Okay. I think I</p> <p>8 read it all.</p> <p>9 Q. Okay. Good. So the e-mail -- let's go</p> <p>10 from the beginning -- is first an e-mail from you to a</p> <p>11 number of Corps people, yeah, within the division, the</p> <p>12 north -- pardon me; excuse me -- the Omaha district</p> <p>13 and then others, I think, in the northwest division.</p> <p>14 Your e-mail, it says "DAPL AAR Comments." What is an</p> <p>15 AAR?</p> <p>16 A. After-action review. So it's basically</p> <p>17 gathering lessons learned for the purpose of applying</p> <p>18 those the next time around.</p> <p>19 Q. Is that a standard Corps practice?</p> <p>20 A. Yeah. It's a standard army practice, and</p> <p>21 I think the Corps also uses that tool.</p> <p>22 Q. Sure. And lessons learned and kind of</p> <p>23 this concept of continuous improvement; right?</p> <p>24 A. Yes.</p> <p>25 Q. And in order to have continuous</p>	<p style="text-align: right;">Page 100</p> <p>1 multifunctional project team.</p> <p>2 Q. Got it. "After it became a significant</p> <p>3 issue in July/August of 2016." All right. And you</p> <p>4 say the why is headquarters Corps will be putting</p> <p>5 together an AAR this week to discuss lessons learned.</p> <p>6 By the way, your e-mail here is dated March 6, 2016.</p> <p>7 So did you do this because someone at the headquarters</p> <p>8 asked you to help out on its effort or were you doing</p> <p>9 something at the district level? I'm confused by</p> <p>10 that.</p> <p>11 A. This was probably in response to some</p> <p>12 kind of conversation I had had with either</p> <p>13 northwestern division or headquarters USACE that they</p> <p>14 wanted to prepare an AAR. And so obviously we were</p> <p>15 going to be a large part of that process for the</p> <p>16 Corps.</p> <p>17 Q. Yeah. Did you think that was a good idea</p> <p>18 or did you think this was a bad idea at the time?</p> <p>19 A. No. I think it was a good idea.</p> <p>20 Q. And so your ability to provide input to</p> <p>21 this larger effort at the headquarters Corps, the</p> <p>22 national Corps office, you asked these people for</p> <p>23 their input?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And when you say you would "roll</p>
<p style="text-align: right;">Page 99</p> <p>1 improvement, what is -- are you gathering information</p> <p>2 internally within the Corps?</p> <p>3 A. Yeah. I mean, I think that's who this</p> <p>4 was directed at, any kind of internal observations</p> <p>5 about things that we could do better the next time</p> <p>6 around.</p> <p>7 Q. And so with this e-mail, you're sending</p> <p>8 it to this group. And, you know, I guess it</p> <p>9 includes -- how did you decide to pick the people you</p> <p>10 sent this to?</p> <p>11 A. It looks like this is mostly the</p> <p>12 corporate board, which included the division chiefs,</p> <p>13 and then anyone who had a significant part to play in</p> <p>14 coordination with other entities, other agencies.</p> <p>15 Q. Okay. Including the state of North</p> <p>16 Dakota?</p> <p>17 A. Yes.</p> <p>18 Q. Including other federal agencies?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And you say in here that you'll</p> <p>21 "roll up comments and submit top 3 to 5 comments.</p> <p>22 Comments should come from anyone who was intimately</p> <p>23 familiar with the DAPL permitting process or on the</p> <p>24 PDT that we stood up." What is the PDT?</p> <p>25 A. Project delivery team, so a</p>	<p style="text-align: right;">Page 101</p> <p>1 up comments," what does that mean?</p> <p>2 A. Meaning that I would collect them and</p> <p>3 just edit them so that they were understandable to</p> <p>4 anyone who might be viewing them at headquarters</p> <p>5 level.</p> <p>6 Q. All right. So the -- then you get -- you</p> <p>7 sent that to the group and the one reply that's the</p> <p>8 second e-mail in this chain is from Larry Janis. Can</p> <p>9 you remind me who Janis is.</p> <p>10 A. Larry Janis was the chief of the natural</p> <p>11 resources division within the operations division of</p> <p>12 the district.</p> <p>13 Q. The Omaha district?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So he says, "Sir, the attached is</p> <p>16 a work in progress, but does identify several AAR</p> <p>17 issues in the format you requested. This does</p> <p>18 incorporate the information that Martha provided</p> <p>19 earlier."</p> <p>20 Do you recall what Martha Chieply</p> <p>21 provided earlier?</p> <p>22 A. I don't, no.</p> <p>23 Q. Okay. Then he goes on to say, "We have</p> <p>24 also taken the liberty to identify five issues that</p> <p>25 might warrant CG visibility." Who is -- who or what</p>

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<p style="text-align: right;">Page 102</p> <p>1 is CG?</p> <p>2 A. The commanding general, so General</p> <p>3 Semonite.</p> <p>4 Q. The chief?</p> <p>5 A. Yes. Or he could have been referring to</p> <p>6 General Spellmon, who's the commander of the</p> <p>7 northwestern division, one of those two, but I think</p> <p>8 he was referring to General Semonite.</p> <p>9 Q. Okay. So what are the five issues that</p> <p>10 he's referring to that might be worthy of the chief</p> <p>11 knowing?</p> <p>12 A. I can't recall what he wrote on there.</p> <p>13 I'm not really sure.</p> <p>14 Q. Okay. So to that e-mail from Mr. Janis</p> <p>15 to the group comes next an e-mail from David Chipman.</p> <p>16 Who is Mr. Chipman?</p> <p>17 A. David Chipman was the real estate</p> <p>18 division chief.</p> <p>19 Q. Okay. What was his job?</p> <p>20 A. So as it pertains to DAPL, David</p> <p>21 Chipman's team was responsible for investigating the</p> <p>22 property ownership to make sure that we understood</p> <p>23 where a Corps property ended and where private</p> <p>24 property began and where tribal land was. And so they</p> <p>25 would help us develop the maps.</p>	<p style="text-align: right;">Page 104</p> <p>1 the protesters and not project office.</p> <p>2 Q. Do you recall when Mr. Pope came into the</p> <p>3 scene? Was it early?</p> <p>4 A. I think it was sometime in early</p> <p>5 September, maybe. Early or mid-September.</p> <p>6 Q. 2016?</p> <p>7 A. That would be my guess, yeah.</p> <p>8 Q. But you don't know?</p> <p>9 A. No. I don't remember.</p> <p>10 Q. Okay. Would it surprise you if that was</p> <p>11 not correct?</p> <p>12 A. No.</p> <p>13 Q. Okay. So the next correspondent in your</p> <p>14 chain is John Voeller; right?</p> <p>15 A. Okay.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And I think, but correct me, sir, Voeller</p> <p>19 is a park ranger at the Oahe project; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And he's a park ranger, but he's also the</p> <p>22 person that you or Colonel Henderson directed be the</p> <p>23 liaison to attend state of North Dakota EOC, Emergency</p> <p>24 Operating Center, meetings; correct? I'm sorry?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Did any of the maps that Mr. Chipman</p> <p>2 developed or oversaw the development of include the</p> <p>3 location of protest camps on Corps property?</p> <p>4 A. Yes.</p> <p>5 Q. And how often did he update those?</p> <p>6 A. Any time there was a significant change</p> <p>7 to the situation, but probably every two or three</p> <p>8 weeks.</p> <p>9 Q. Okay. And what tools and sources of</p> <p>10 information did Mr. Chipman use to learn those things</p> <p>11 within his responsibility?</p> <p>12 A. A lot of that information came from our</p> <p>13 liaison with the state of North Dakota in the EOC.</p> <p>14 Some of it came from Major Pope, who's included on</p> <p>15 that cc line. And then some of it came from the</p> <p>16 project office leadership, Eric Stasch with his team.</p> <p>17 And then if there was a reported -- some</p> <p>18 kind of activity reported at a specific location via</p> <p>19 the sheriff, they would take that into consideration,</p> <p>20 too.</p> <p>21 Q. And where did Major Pope get his</p> <p>22 information from?</p> <p>23 A. So Major Pope was -- he was actually on</p> <p>24 ground in North Dakota for a period of two or three</p> <p>25 weeks, I believe. So he was engaging directly with</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Okay. All right. And so did you read</p> <p>2 Mr. Voeller's response to you? He seems to just</p> <p>3 respond to you, I think; right?</p> <p>4 A. Yes.</p> <p>5 Q. Not the rest of the group. He's dropped</p> <p>6 the rest of the group and he just responds to you.</p> <p>7 And he says, "I am not sure if this is the type of</p> <p>8 comment you are looking for." So he's asking you a</p> <p>9 question, but he goes on to say, My comment would be</p> <p>10 that the Corps, either on the district level -- so</p> <p>11 that's in Omaha -- but specifically at HQ level, the</p> <p>12 Corps of Engineers headquarters, Washington, D.C.,</p> <p>13 would need to try to push for more federal law</p> <p>14 enforcement assistance to assistance local agencies</p> <p>15 involved in something like this protest in the future.</p> <p>16 There are a lot of unhappy law</p> <p>17 enforcement and citizens in general here in North</p> <p>18 Dakota in regards to the fact that other than the BIA</p> <p>19 and DOI, Department of Interior, they -- he's</p> <p>20 referring to the unhappy law enforcement and citizens</p> <p>21 in North Dakota -- they did not receive any federal</p> <p>22 law enforcement support for actual boots on the ground</p> <p>23 to help with protest activities. This fact could have</p> <p>24 large implications in the future for the working</p> <p>25 relationships for the Corps field staff at the various</p>

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<p style="text-align: right;">Page 106</p> <p>1 projects, as well as other federal agencies with the</p> <p>2 local law enforcement agencies that are relied on for</p> <p>3 assistance.</p> <p>4 And so did I read that accurately?</p> <p>5 A. Yes.</p> <p>6 Q. Then you replied to Mr. Voeller same day,</p> <p>7 hour apart. You said, "Okay. Thanks, John. I will</p> <p>8 probably spin that as, quote, coordination with other</p> <p>9 agencies, end quote, because even Lieutenant General</p> <p>10 Semonite" -- that's the chief of the Corps of</p> <p>11 Engineers; right?</p> <p>12 A. Yes.</p> <p>13 Q. -- "didn't have the ability to influence</p> <p>14 the politics of that decision. It certainly has had</p> <p>15 an impact."</p> <p>16 So I have a few questions about your</p> <p>17 response. You're saying that even the chief of the</p> <p>18 Corps of Engineers didn't have the ability to</p> <p>19 influence the politics of that decision. What</p> <p>20 decision are you referring to?</p> <p>21 A. So what I was referring to was providing</p> <p>22 other federal support to the site.</p> <p>23 Q. Okay. And why did you use the phrase "I</p> <p>24 will probably spin that"?</p> <p>25 A. So when you're preparing an AAR, you want</p>	<p style="text-align: right;">Page 108</p> <p>1 to provide other law enforcement support to either,</p> <p>2 you know, prevent trespassing or to take care of the</p> <p>3 larger problems on the site. Not necessarily</p> <p>4 specifically evicting the large camps.</p> <p>5 Q. Well, when you say "to prevent</p> <p>6 trespassing," what about those people that are in the</p> <p>7 act of already trespassing? How would federal</p> <p>8 assistance do that?</p> <p>9 MS. BOBET: Objection; calls for</p> <p>10 speculation.</p> <p>11 A. So --</p> <p>12 Q. (BY MR. SEBY) I'm asking you a question</p> <p>13 about the words you used in an e-mail that started in</p> <p>14 a chain that you created. So help me understand what</p> <p>15 you are talking about.</p> <p>16 A. Well, what I'm talking about is any</p> <p>17 additional federal law enforcement support would have</p> <p>18 helped, whether that be preventing trespassing or</p> <p>19 moving everyone off the site, or just assisting local</p> <p>20 law enforcement with their roles. So that is what I'm</p> <p>21 talking about.</p> <p>22 Q. And so you're saying -- I want to make</p> <p>23 sure I understand that you're saying -- you need a</p> <p>24 minute there?</p> <p>25 A. No. Just my motion light keeps turning</p>
<p style="text-align: right;">Page 107</p> <p>1 to make sure that the way that you're preparing it is</p> <p>2 understandable to all entities, and at the</p> <p>3 headquarters USACE level, the coordination with other</p> <p>4 agencies was the real issue.</p> <p>5 Q. Well, did you feel as though the Corps</p> <p>6 didn't do a good job in coordinating? Is that what</p> <p>7 you think Voeller is talking about?</p> <p>8 MS. BOBET: Objection; compound.</p> <p>9 A. No. I don't necessarily think the Corps</p> <p>10 didn't do a good job. I just think that at the</p> <p>11 federal government level, the support that we were</p> <p>12 providing wasn't adequate to meet the needs.</p> <p>13 Q. (BY MR. SEBY) The needs of who?</p> <p>14 A. The needs of the protesters, the needs of</p> <p>15 the state of North Dakota, the district, basically</p> <p>16 just helping us with the situation.</p> <p>17 Q. But what did you mean by even the chief</p> <p>18 of the engineers "didn't have the ability to influence</p> <p>19 the politics of that decision"? What decision are you</p> <p>20 referring to?</p> <p>21 A. The decision to or to not provide other</p> <p>22 federal law enforcement support.</p> <p>23 Q. To the Corps to evict people from the</p> <p>24 property early on?</p> <p>25 A. Well, not specifically to evict them, but</p>	<p style="text-align: right;">Page 109</p> <p>1 off.</p> <p>2 Q. You're not moving around apparently</p> <p>3 enough; right? I'm just trying to understand, you</p> <p>4 are -- a question: Are you saying that even the chief</p> <p>5 of engineers couldn't influence that issue?</p> <p>6 A. Yeah. So as I said before, we had</p> <p>7 requested support through the chain of command to try</p> <p>8 to get additional assets. And my impression was that</p> <p>9 he wasn't able to get support from outside of the</p> <p>10 Corps of Engineers.</p> <p>11 Q. So I'm just confused because you're</p> <p>12 talking about within the Corps is one thing. He's the</p> <p>13 top of the Corps. So are you referring to outside of</p> <p>14 the Corps?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So getting federal resources</p> <p>17 outside of the Corps, he couldn't, in your words,</p> <p>18 quote, influence the politics of that decision. I'm</p> <p>19 trying to understand what you mean, "the politics of</p> <p>20 that decision" outside of the Corps.</p> <p>21 A. Yeah. I mean, I don't know if I can say</p> <p>22 it any other way. I feel like I've already explained</p> <p>23 that. There were resources outside of the Corps of</p> <p>24 Engineers' control that could have assisted with the</p> <p>25 problems, but we were not able to get anything that</p>

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1 was substantively effective.

2 Q. So when you say "the politics of that

3 decision," what are you referring to? Politics of the

4 decision outside of the Corps not to provide any

5 federal resources, is that what you're talking about?

6 A. I'm saying the decision to commit

7 external resources or not. That is the decision that

8 I'm talking about.

9 Q. And what politics are you referring to?

10 A. Well, so above the Corps of Engineers

11 level there were lots of considerations that

12 leadership was, I'm sure, weighing with regards to

13 what actions to take.

14 Q. And would that include -- let's start

15 with where that may include and you tell me if it is

16 correct or not. Would that include the civil works

17 component of the Corps?

18 A. I'm talking about everything outside of

19 the control of the Corps of Engineers.

20 Q. So still within the army or outside the

21 army, too?

22 A. I'm just talking about the Corps of

23 Engineers, which is a small component of the army.

24 Q. Okay. So the army still; right?

25 A. So the Corps of Engineers is just one

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1 portion of the army. That's the part that I'm

2 referring to.

3 Q. Okay. And so when you say politics -- a

4 decision based on politics was made above the Corps,

5 the first next level would be within the army; right?

6 A. Yes.

7 Q. And then outside of the army, it would be

8 the larger administration at the time; is that

9 correct?

10 A. Yeah. It would be anything else in the

11 federal government, any other federal agencies.

12 Q. In the executive branch?

13 A. Yes.

14 Q. Okay. Are you familiar with any detail

15 in that regard?

16 A. No. I just know that we sent up a

17 request and, you know, weren't really able to get any

18 additional assistance.

19 Q. We, the Corps, sent up a request or you

20 and Colonel Henderson and Spellmon sent a request to

21 the chief? I'm trying to understand. You keep

22 switching between within the Corps and outside of the

23 Corps, and I want to make sure I understand what

24 you're talking about or whether you're even answering

25 the question.

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1 A. So what I can speak to --

2 MS. BOBET: Objection; compound.

3 A. What I can speak to is --

4 Q. (BY MR. SEBY) I'm sorry. Just let me

5 stop you for a minute. When you're speaking, if one

6 of you -- your counsel or you -- could speak one after

7 the other and not on top of each other.

8 MR. SEBY: Ms. Bobet, are you done?

9 MS. BOBET: Yes. To make sure it's

10 clear, I'll state my question again. The question was

11 argumentative and compound.

12 Q. (BY MR. SEBY) Colonel, would you clarify

13 for me whether we are -- whether your answers are

14 talking about what was sent up and so sent up within

15 the hierarchy of the Corps or the Corps sending

16 something outside of the Corps?

17 A. So what I can speak to is that my

18 district commander had submitted a request for

19 assistance.

20 Q. Yes.

21 A. And that is all I can say for certain.

22 Q. Okay. And so you don't know if anything

23 at all happened after that, right, or do you?

24 A. I don't.

25 Q. Okay. Colonel, can you recall a time

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1 when you or any of your Corps of Engineers or

2 Department of Army colleagues made a statement that

3 resulted in any deescalation of the DAPL protests?

4 A. I don't remember any specific statement,

5 no.

6 Q. How about any action taken that resulted

7 in any deescalation of the DAPL protests?

8 A. No, not specifically.

9 Q. Okay. All right. Unless you have

10 indicated otherwise throughout the deposition today,

11 have you understood my questions?

12 A. Yes.

13 Q. Is there anything further that you would

14 like to add?

15 A. No.

16 MR. SEBY: Okay. At this time,

17 Ms. Bobet, I have no further questions and pass the

18 witness to you for United States.

19 MS. BOBET: Thank you, Mr. Seby.

20 EXAMINATION

21 BY MS. BOBET:

22 Q. Just one question to follow up,


23 Lieutenant Colonel. When you talk about the federal

24 government level of support not being adequate or

25 resources outside the Corps not being provided, I

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<p style="text-align: right;">Page 114</p> <p>1 understand you to be speaking about federal law</p> <p>2 enforcement assistance in particular; is that right?</p> <p>3 A. Yes. That's correct.</p> <p>4 MS. BOBET: All right. That was all the</p> <p>5 clarification I had. Unless Mr. Seby has anything</p> <p>6 else, I think we're done.</p> <p>7 THE VIDEOGRAPHER: Counsel, before we go</p> <p>8 off the record, may we please get orders on the</p> <p>9 record.</p> <p>10 MS. BOBET: Yeah. We'd like to read and</p> <p>11 sign. I will -- we'll need to obligate the funds for</p> <p>12 the order, but I can tell you now that we'd like to</p> <p>13 order the transcript. I can e-mail you with the speed</p> <p>14 that we need. We'd like the exhibits as well.</p> <p>15 THE VIDEOGRAPHER: Mr. Seby.</p> <p>16 MR. SEBY: Same, please. Same order and</p> <p>17 same schedule as the United States for North Dakota,</p> <p>18 please.</p> <p>19 THE VIDEOGRAPHER: Thank you. Going off</p> <p>20 the record. This concludes the videotaped deposition</p> <p>21 of Lieutenant Colonel James Startzell. The time is</p> <p>22 6:03 p.m. UTC, 1:03 p.m. Central.</p> <p>23 WHEREUPON, the within proceedings were</p> <p>24 concluded at the approximate hour of 12:03 p.m.</p> <p>25 Mountain on the 16th day of May, 2022.</p> <p style="text-align: right;">Page 115</p> <p>1 I, LIEUTENANT COLONEL JAMES STARTZELL, do</p> <p>2 hereby certify that I have read the above and</p> <p>3 foregoing deposition and that the same is a true and</p> <p>4 accurate transcription of my testimony, except for</p> <p>5 attached amendments, if any.</p> <p>6</p> <p>7 Amendments attached () Yes () No</p> <p>8</p> <p>9 _____</p> <p>10 LIEUTENANT COLONEL JAMES STARTZELL</p> <p>11</p> <p>12</p> <p>13 The signature above of LIEUTENANT COLONEL</p> <p>14 JAMES STARTZELL was subscribed and sworn to or</p> <p>15 affirmed before me in the county of _____,</p> <p>16 state of Texas, this _____ day of _____,</p> <p>17 2022.</p> <p>18</p> <p>19 _____</p> <p>20</p> <p>21 Notary Public</p> <p>22 My commission expires</p> <p>23</p> <p>24</p> <p>25 State of North Dakota 5/16/22 (tdg)</p>	<p style="text-align: right;">Page 116</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF COLORADO)</p> <p>3) ss.</p> <p>4 COUNTY OF ARAPAHOE)</p> <p>5 I, TIFFANY D. GOULDING, Registered</p> <p>6 Professional Reporter and Notary Public ID No.</p> <p>7 19984028637, State of Colorado, do hereby certify that</p> <p>8 previous to the commencement of the examination, the</p> <p>9 said LIEUTENANT COLONEL JAMES STARTZELL verbally</p> <p>10 declared his testimony is under the penalty of perjury</p> <p>11 in relation to the matters in controversy between the</p> <p>12 parties hereto; that the said deposition was taken in</p> <p>13 machine shorthand by me at the time and place</p> <p>14 aforesaid and was thereafter reduced to typewritten</p> <p>15 form; that the foregoing is a true transcript of the</p> <p>16 questions asked, testimony given, and proceedings had.</p> <p>17</p> <p>18 I further certify that I am not employed</p> <p>19 by, related to, nor of counsel for any of the parties</p> <p>20 herein, nor otherwise interested in the outcome of</p> <p>21 this litigation.</p> <p>22 IN WITNESS WHEREOF, I have affixed my</p> <p>23 signature this 1st day of June, 2022.</p> <p>24</p> <p>25 My commission expires November 4, 2022.</p> <p>26 x_____ Reading and Signing was requested.</p> <p>27 _____ Reading and Signing was waived.</p> <p>28 _____ Reading and Signing is not required.</p> <p>29</p> <p>30 </p> <p>31 _____</p> <p>32 Tiffany Goulding</p> <p>33 Registered Professional Reporter</p> <p>34</p> <p>35</p> <p style="text-align: right;">Page 117</p> <p>1 Errata Sheet</p> <p>2</p> <p>3 NAME OF CASE: Plaintiff vs UNITED STATES</p> <p>4 DATE OF DEPOSITION: 05/16/2022</p> <p>5 NAME OF WITNESS: Lieutenant Colonel James Startzell</p> <p>6 Reason Codes:</p> <p>7 1. To clarify the record.</p> <p>8 2. To conform to the facts.</p> <p>9 3. To correct transcription errors.</p> <p>10 Page _____ Line _____ Reason _____</p> <p>11 From _____ to _____</p> <p>12 Page _____ Line _____ Reason _____</p> <p>13 From _____ to _____</p> <p>14 Page _____ Line _____ Reason _____</p> <p>15 From _____ to _____</p> <p>16 Page _____ Line _____ Reason _____</p> <p>17 From _____ to _____</p> <p>18 Page _____ Line _____ Reason _____</p> <p>19 From _____ to _____</p> <p>20 Page _____ Line _____ Reason _____</p> <p>21 From _____ to _____</p> <p>22 Page _____ Line _____ Reason _____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25</p>
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